other place where the property is situate, and number of the house, if any."

The notice of claim in the County Voters Act, as given in Schedule C of that Act, and which I have already quoted, did not require more information to be given than under the Burgh Voters Act. Construing the words "nature of qualification" without the aid of the decision in *Hill* v. *Anderson*, I would come to the conclusion that what was required was simply that the claimant should set forth the character in which he claimed, as proprietor or tenant, or as husband in right of wife, or as joint proprietor, or other character; and it would be out of place to insert in the column, along with the character of the qualification, the subjects in respect of which the qualification was had.

When a point of practice is once settled by decision of this Court the ruling should be adhered to unless it be shown to be clearly wrong. Unless this is recognised and acted on, the administration of the law of registration will get again into its old confusion and uncertainty, to prevent which was the cause of creating this Appeal Court.

I am of opinion that the appeal should be sustained, and a remit made to the Sheriff to hear and dispose of the claim.

The Court refused the appeal.

Counsel for Appellant — Brand. Agent—William Archibald, S.S.C.

Counsel for Respondent—Dickson. Agent—W. G. L. Winchester, W.S.

COURT OF SESSION.

Thursday, November 22.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

BRUCE *v.* BRUCE AND OTHERS.

Commonty—Division of Commonty—Act 1695, *c.* 23*—Discretion of Commissioner.*

The Court will not interfere with the commissioner appointed in a process of division of commonty in regard to matters of detail, but only if he goes wrong in principle.

William Arthur Bruce, Esq. of Symbister, Shetland, raised an action of division of the scattalds or commonty of North Cunningsburgh, Haddabister, and Cliff Hill, in Shetland, in the year 1878.

In July 1878 the Lord Ordinary (Rutherfurd Clark) remitted to the Sheriff-Substitute of Shetland as commissioner. After two separate schemes of allocation had been prepared by a surveyor under the directions of the commissioner, to which one or other of the parties lodged objections, a third scheme of division was prepared, and by interlocutor dated 5th June 1882 was allowed to be seen by the parties.

Thereafter Nicol Bain and other small proprietors, who claimed in the division, lodged objections to this scheme. These objections raised no question of principle, but dealt entirely with minor matters of detail.

The Lord Ordinary (Kinnear), before whom the case came to depend, repelled the objections, and remitted to the Sheriff-Commissioner to proceed further in the cause.

The objectors reclaimed.

At advising—

Lord President—It appears to me that in a process of division of commonty the whole practical work must necessarily be done on the spot by the commissioners and surveyors appointed by him, and in every matter of detail the Court must necessarily trust to them to carry out the Act of 1695, and if, as in this case, the Act is not strictly applicable to the circumstances, then to conform as nearly as possible to it. The office of this Court is really to give effect to the scheme of division prepared by the commissioner. Its control over the commissioner consists in this, that if he goes wrong in principle it will set him right, or if he comes for instructions on any doubtful point it will advise him, but as for interfering with his decision in practical matters, that is a thing which I have never heard of the Court doing. The objections here raise no question of principle; they are all objections to matters of detail in the scheme of division. If we were to interfere in such matters we should be taking a leap in the dark, and might upset the whole process so far as it has gone. I am not prepared to do that, and therefore I think the decision of the Lord Ordinary should be affirmed.

Lords Deas, Mure, and Shand concurred.

The Court adhered.

Counsel for Pursuers (Respondents) — Henderson. Agents—Mackenzie & Kermack, W.S.

Counsel for Defenders (Reclaimers)—Galloway. Agent—Thomas Carmichael, S.S.C.

Friday, November 23.

FIRST DIVISION.

[Sheriff of Argyleshire.

NELMES & COMPANY *v.* EWING.

Landlord and Tenant—Urban Lease—Hypothec—Invecta et Illata—*Furniture Hired by Tenant for Purposes of his Business.*

The tenant of a billiard-room hired the tables and other furnishings forming the stock-in-trade at a weekly rate. After they had been for several years in his possession he fell into arrear with the hire, and the proprietor of them removed them. The landlord thereupon used sequestration, and obtained warrant to have them carried back in order to subject them to his hypothec for rent to become due for the current year. In a petition for interdict against the landlord's selling or interfering with them—*held* that they were subject to the landlord's hypothec.

Henry Nelmes & Company, billiard and bagatelle table manufacturers, Wellington Street, Glasgow, on 30th July 1876 agreed to let on hire to John

Neilson, billiard-room keeper, Dunoon, a billiard-table and appurtenances at the rate of 8s. per week. On 15th September 1878 another agreement was made with regard to a second billiard-table and appurtenances. These articles remained on hire with Neilson until 11th October 1882, when they were removed by Nelmes & Company to other premises in Dunoon. Thereupon Mrs Jane Ewing, proprietrix of the premises, without any communication with Nelmes & Company, on the narrative that she was heritable proprietrix of the premises, and that they had been let by her to Neilson for the year ending Whitsunday 1883, at a yearly rental of £33, and that there would fall due at Martinmas 1882 the sum of £16, 10s., and the same sum at Whitsunday 1883, being the half-year's rents of said premises due at these terms respectively, presented a petition to the Sheriff to sequestrate, and for warrant to inventory and secure, the whole stock-in-trade, furniture, and effects which were or had been on the premises. She also craved warrant to officers of Court to search for, take possession of, and carry back to the said premises the stock-in-trade, furniture, and other effects removed therefrom by Neilson, and there to inventory and secure the same, "and particularly, a billiard-table and pertinents removed to a shop in Moir Street, Dunoon, and also another billiard-table and pertinents removed to the Argyll Hotel, Dunoon," and that in security and for payment to her of the rents above mentioned. A warrant was granted on 24th October 1882, and the table which had been removed to Moir Street was taken back to Argyll Street, but the officer was prevented from taking back the one which had been removed to the Argyll Hotel.

This was a petition presented by Nelmes & Company against Mrs Ewing in the Sheriff Court of Argyleshire, in which they prayed the Court "to interdict, prohibit, and discharge the defender, or any person or persons acting under her authority or instructions, from selling, applying for a warrant to sell, removing, disposing of, or in any other way interfering with, two billiard-tables, twenty-four cues, two marking boards, four butts, four rests, six balls, one gas pendant, one table-cover, and a set of billiard rules, all belonging to the pursuers, and partly situated in the billiard-room now or lately occupied by John Neilson in Argyll Street, Dunoon, and partly in the Argyll Hotel, Dunoon, occupied by John Kennedy." They averred that the whole of these articles belonged to them, and that they removed them in consequence of Neilson falling into arrear in the payment of the hire.

They pleaded—"(1) The whole effects condescended on being the property of the pursuers, and having been removed by them from the defender's premises, were not subject to sequestration nor hypothecated for any rent to become due to defender after the date of their removal."

The defender pleaded—"(2) The said billiard-tables and pertinents having belonged to the said John Neilson, and having for several years been used by him within the premises let by the defender to him, are subject to the right of hypothec for the current year's rent. (3) Assuming that the said billiard-tables and pertinents were hired by the said John Neilson from and belong to the pursuers, they are nevertheless, as such, subject to the landlord's hypothec."

On 22d December 1882 the Sheriff-Substitute (Campion) sustained the second and third pleas for the defender, and refused interdict.

"*Note.*—There is no dispute in this case as to the facts, the only question raised is the one as to whether a billiard-table lent out on hire is subject to the landlord's right of hypothec. The principle involved seems to be settled by the case *Penson and Robertson*, June 6, 1820, F.C. 147. It was there decided that a musical instrument lent out on hire was so subject. The case of a billiard-table hired for use by a tenant of a billiard-room must surely be a still stronger one in the same direction, as it is upon the table alone that the landlord has to trust for security for his rent."

The pursuers appealed to the Sheriff (Irvine), who on 28th February 1882 dismissed the appeal and affirmed the judgment of the Sheriff-Substitute.

"*Note.*—The Acts of Parliament which first modified and afterwards abolished the landlord's right of hypothec in agricultural subjects did not touch the corresponding right over the *invecta et illata*, 'the furniture and utensils of the house,' in urban tenements. All the former authorities are therefore still applicable to questions on this head. These authorities extend over a long series of years, and in so far at least as regards the matter of furniture lent on hire are sufficiently clear and distinct.

"Thus Bankton, whose 'Institute of the Laws of Scotland in Civil Rights' was published in 1751-3, classes among the subjects of hypothecation as *invecta et illata* not only the tenant's own goods, but 'such of other men's as are used as furniture to the same, for by consenting to their being applied to that use, the owners are understood to agree to their being subject to the rent,' or, as he also expresses it, 'are deemed in law to undertake the hazard of the rent'—b. 1., tit. 17, sec. 11.

"The decision in the early case of *Wauchope* v. *Gall*, November 30, 1805, Hume's Decisions, 227, is to the same effect, that hypothec for the rent of a dwelling-house affects furniture lent to the tenant for hire.

"Similarly the cases of *Wilson* v. *Spankie*, December 17, 1813, Fac. Coll., coupled with that of *Penson and Robertson, Petitioners*, June 6, 1820, Fac. Coll., are treated by Professor More as warranting the conclusion that furniture lent to the tenant, whether for hire or not, is liable to the landlord's claim of rent—Notes to Stair, lxxxiii. And although in some of these cases mention is made primarily of dwelling-houses, yet the same law holds as to shops, where the right of hypothec extends as well over the goods for sale as over the furniture.—Hunter, 5, 24, 11, 2, p. 376 of Mr Guthrie's edition, where all the authorities are carefully analysed, and in the opinion of the learned author have fixed the law of the whole question.

"It is not of vital consequence to the present case that the question as to furniture lent *gratuitously* is not, perhaps, quite so clearly settled, and that in the latest case on the subject that point was left open.—*Adam* v. *Sutherland*, November 3, 1863, 2 Macph. 6.

"It may also be observed that in the case of *Jaffray* v. *Carrick*, November 18, 1836, 15 S. 43, quoted by the pursuers, while Lord Medwyn, on a special ground, was in favour of the landlord's

claim of hypothec, the other Judges carefully guarded themselves against being held to decide any general question.

"In particular, Lord Glenlee said, 'We have nothing to do with the law as to furniture lent for or without hire.' Lord Meadowbank went on the particular point that 'the furniture was the property of the respondent, and tortuously withheld from her;' and the Lord Justice-Clerk (Boyle) expressly said that it was not necessary to decide any general point, that 'he went on the specialties of the case,' which were there clearly made out.

"It may also be noted that in the present case the hired furniture formed substantially the whole plenishing on the premises, and therefore the question is not here raised which was mooted in *Adam* v. *Sutherland* as to a possible exception from the general rule in the case of a single article of hired furniture, as in the example put by Lord Deas of 'forms hired for an evening party or china for a dinner party.' Nor does it seem necessary here to discuss at length the question ingeniously argued for the pursuers as to the doctrine of reputed ownership. It appears from the general concurrence of authorities that the true principle of this hypothec is, as Bankton puts it, the knowledge by the lessor of the risk which he runs when he brings his furniture into the premises.

"On the whole matter, it appears to the Sheriff that the contention of the defender is well founded, that she has a right of hypothec over the hired furniture within the premises belonging to her, which practically constituted her only security for the rent; that she is entitled to enforce that right by the usual means of sequestration and sale, or, if need be, within three months after the term, 'to follow the property into the possession of another landlord, and there sequestrate the *invecta et illata* that had formerly been in her house'—*per curiam* in *Christie* v. *Macpherson*, December 14, 1814; Fac. Coll.; and Note 151 by Ivory to Ersk. ii. 6, 64."

The pursuers then appealed to the Court of Session, and argued—The right of hypothec was one thing, the right to follow specific articles another. If an article were in a tenement—except such as might be there without the will of the owner—it was liable to attachment for the whole year's rent; if not attached, then it was not liable at all. The landlord's right of hypothec did not, without sequestration, prevent the lessor from removing his property at the end of the term. Even if the article was liable for the term before removal, it was not liable for the term following.

Authorities—Bell's Comm. (7th ed.) ii. 30; Ersk. Inst. ii. 6, 64; *Adam* v. *Sutherland*, November 3, 1863, 2 Macph. 6; *Blackwood* v. *Alexander*, 2 Br. Supp. 228; *Tennant* v. *M'Brayne*, February 28, 1833, 11 S. 471; *Penson and Robertson, Petitioners*, June 6, 1820, F.C.; *Wilson* v. *Shankie*, December 17, 1813, F.C.; *Wauchope* v. *Gall*, November 30, 1805, Hume 227; *Christie* v. *Macpherson*, December 14, 1814, F.C.

Argued for respondents—There was a distinction between a case where a single article has been hired for a specific purpose and for a limited time, and a case such as the present, where the articles hired were really the whole plenishing of the premises.

Authorities—Bell's Prin. sec. 1276; *Wells* v. *Proudfoot and Miller*, Hume 225.

At advising—

Lord President—I think the facts of this case must be taken substantially as they are stated by the petitioner in the Sheriff Court. The respondent let certain premises to Neilson to be occupied as a billiard-room, and Neilson hired a billiard-table, a marking-board, twelve cues, balls, &c., from the appellant about July 1876. In like manner in September 1878 the appellant agreed to let another billiard-table and relative furniture, and the whole of these articles remained on the premises till 11th October 1882, when, in consequence of Neilson falling in arrear with the rent payable for them, the complainer removed them from the premises. Each set of articles was let to Neilson at a rent of 8s. per week, but they remained on the premises for some years before they were removed.

On October 24, 1882, the landlord came forward, and the appellants aver that she, without communication with them, on the narrative that she was heritable proprietrix of the premises, and alleging that one month's rent was about to come due at the next term, craved the Court to sequestrate the stock on the premises, and also to grant a warrant to "search for, take possession of, and carry back to the premises the stock-in-trade, furniture, and other effects removed therefrom," and to subject them to her hypothec as landlord. On these facts, and one billiard-table having been brought back, the appellants craved interdict against these articles being sold to satisfy the landlord's claim for rent, on the ground that they did not fall within the hypothec.

I need hardly mention that the hypothec in urban subjects is not affected by recent legislation, and stands as it has been fixed by the course of decisions cited by the Sheriff-Substitute and the Sheriff. It is argued for the appellants that when an article of furniture, let on hire for a limited time and for a definite purpose, is at the end of the term of hire removed from the premises, it does not fall under the hypothec, and if it is removed by the owner before it is attached by sequestration, it cannot be brought back. Now, that is a question on which I can understand that a good deal could be said, but it does not appear to me that the special facts of this case raise it. What was let here was not a single article for a limited time and for a limited purpose, but the entire plenishing of the premises—the room was intended to be occupied as billiard premises, and what the appellants let out constituted the whole furniture and plenishing of such rooms. In such a case as that the argument cannot apply, and it is of no moment to say that the articles were let out at a hire of so much a week, and paid for each week, if the occupation and use of the subjects was for a term of years, as it certainly was here. In these circumstances I have no hesitation in agreeing with the conclusion arrived at by the Sheriff-Substitute and the Sheriff.

Lord Deas—I am more than ever satisfied that it is not safe to decide any of these questions relating to the landlord's hypothec on the general rule that what is brought into the house of another always become liable to the hypothec.

In many cases the application of the rule would

be quite unjust and unreasonable, but in this particular case I have no doubt that the rule is applicable.

LORD MURE and LORD SHAND concurred.

The Court refused the appeal.

Counsel for Pursuers (Appellants)—J. P. B. Robertson—M'Lennan. Agent—James Skinner, Solicitor.

Counsel for Defender (Respondent) — A. J. Young. Agents—Martin & M'Glashan, S.S.C.

Tuesday, November 27.

FIRST DIVISION.

SPECIAL CASE—FRASER AND OTHERS.

Succession—Fee or Liferent—Vesting subject to Defeasance.

Terms of a deed from which *held* that a fee had vested in the daughter of the testator subject to defeasance in the event of her having issue or being survived by any of her brothers or sisters.

Charles Fraser, Esq. of Williamston, in the county of Aberdeen, died on 19th June 1823, survived by his wife Mrs Helen Forbes, who died in 1840. The issue of the marriage were three sons and two daughters, viz., Charles Fraser junior, William Fraser, James John Fraser, Jane Fraser, and Elizabeth Fullerton Fraser.

By his disposition and deed of settlement, dated 19th February, and recorded in the Books of Council and Session June 24, 1823, Charles Fraser senior gave, granted, and disponed to and in favour of Charles Fraser junior, his eldest son, and the heirs whomsoever of his body, whom failing to his, the granter's, other children, successively, and the heirs whomsoever of their respective bodies, whom failing his own nearest heirs and assignees whomsoever, All and whole the lands and barony of Newton of Wrangham and others lying in the county of Aberdeen, called the estate of Williamston, under burden of the real liens, burdens, provisions, faculty, and others therein expressed, and, *inter alia*, as follows—"*Fourthly*, under the burden of payment to each of my daughters, the said Jane Fraser and Elizabeth Fullerton Fraser, of the sum of £3000 sterling, payable to them respectively in manner after mentioned, viz., the interest only of £2000 sterling to be payable to each of them during their said mother's lifetime, and to commence from and after the day of my death, and the interest of the said sums of £3000 sterling each to commence from and after the death or entering into a second marriage of my said spouse, and which said sums of interest shall in all time coming continue payable by the said Charles Fraser junior at the rate of 5 per cent., at two terms in the year, Whitsunday and Martinmas, but declaring that it shall not be in the power of the said Jane Fraser or Elizabeth Fullerton Fraser to call upon my said son Charles, or the disponees before mentioned, for payment of the said provisions of £3000 sterling to each during their natural lives, except the sums of £1000 sterling to each, which shall be at their absolute disposal, but which said sums of £1000 sterling to each shall not be exigible till six years from and after my death, nor shall it be in the power of the said Charles Fraser or the foresaid disponees to pay up said provisions to my said daughters under the foresaid exception of £1000 sterling to each, but the same shall remain a real lien and burden on the lands of Newton of Wrangham and others lying in the county of Aberdeen first above disponed, and at their death shall go along with the foresaid conditional provisions to the lawful children of their bodies respectively, in such proportions as the said Jane or Elizabeth Fullerton Fraser shall think fit, and in the event of their making no distribution, to the lawful children of their bodies respectively, share and share alike, and in the event of their having no lawful issue of their own bodies, then it is hereby expressly declared that the said provisions of £3000 sterling to each—under the foresaid exception of £1000 sterling to each—and the other conditional provisions, shall revert and return to my said sons Charles, William, and James John, and to the survivor of the said Jane and Elizabeth Fullerton Fraser, in such proporportions as the said Jane or Elizabeth Fullerton Fraser shall think proper, and in the event of both or either of them making no distribution, then those only of my said children who shall be alive at the time shall succeed, share and share alike; and hereby farther expressly declaring that it shall not be in the power of the said Jane Fraser and Elizabeth Fullerton Fraser to dispone, alienate, assign or convey, or in any manner of way pledge, directly or indirectly, the foresaid provisions of £3000 sterling each—under the foresaid exception of £1000 sterling to each—or the foresaid conditional provisions, or contract any debt thereon during the whole course of their natural lives, otherwise than the foresaid conditional provision of £4000 sterling in favour of the said Elizabeth Fullerton Fraser in the event of the said Jane Fraser succeeding to the said lands of Newton of Wrangham as aforesaid; declaring hereby all such dispositions, assignations, contracts, and obligations null and void, and upon such contravention it is hereby specially declared that the right of the contravener shall cease and determine as to the fee of the foresaid provision of £3000 sterling—under the foresaid exception of £1000 sterling to each—and conditional provisions, excepting the said conditional provisions of £4000 sterling in favour of the said Elizabeth Fullerton Fraser, and the same shall, *ipso facto*, devolve in manner after mentioned, viz., upon the lawful heirs of the body of such contravener, share and share alike, whom failing the same shall revert and return to the said Charles, William, and James John Fraser, and the survivor of the said Jane and Elizabeth Fullerton Fraser not so contravening, share and share alike: But declaring always that although the contravener shall entirely lose the fee of the foresaid provision—under the foresaid exception—and conditional provision, and the disposal thereof, still the same shall remain a real lien and burden on the said lands of Newton of Wrangham and others in the county of Aberdeen until the death of the said contravener, to answer the legal interest thereof, which notwithstanding the above contravention such contravener shall have