practice which has hitherto prevailed. The case, moreover, does not contain materials for ascertainment of the average cost, year by year, of such partial renewals by the owners as might be said to give the sewer works a life of indefinite duration.

Counsel for the Appellants—Horne, K.C. —Ingram. Agent—H. Inglis Lindsay, W.S.

Counsel for the Midlothian Assessor—Constable, K.C.—Duffus. Agent—A. G. G. Asher, W.S.

Counsel for the Leith Assessor—Lippe. Agent—R. H. Millar, S.S.C.

COURT OF SESSION.

Friday, December 12.

SECOND DIVISION.

STEWART'S TRUSTEES *v.* STEWART.

Succession — Heritable or Moveable — Debenture Stock of Limited Company— Jus relictæ — Agreement between Company and Trustees for Stockholders Providing that Stock be Personal Estate— Act 1661, *cap.* 32.

An agreement between a limited company and the trustees for the holders of the company's debenture stock provided that the stock "shall be, and shall have the incidents of, personal estate." *Held*, in a question with the widow of a holder of the stock claiming *jus relictæ* out of it, that notwithstanding this provision the stock was heritable *quoad* the widow's rights.

John Charles Stewart of Kinlochmoidart, Inverness-shire, and others, the testamentary trustees of the late Francis Pott Stewart, Craigweil, Ayr, who died on 26th November 1890, leaving his whole estate, heritable and moveable, to them as trustees, *first parties;* James Todd Stewart and Andrew Falconer, testamentary trustees of the late John Stewart, a brother of the testator, *second parties;* Frederick Campbell Stewart and William Stewart Fraser, testamentary trustees of the late Robert Stewart, another brother of the testator, *third parties* (Robert and his brother John being the testator's sole heirs *in mobilibus*); Robert Stewart and others, children or representatives of children of the late John Stewart, *fourth parties;* John Charles Stewart and Frederick Campbell Stewart, the two sons of the late Robert Stewart, *fifth parties;* Mrs Louisa Gertrude Stewart or Swinburne and Mrs Frances Elizabeth Stewart or Wilson, the two daughters of Robert Stewart, with their respective husband's consent, *sixth parties;* and Mrs Agnes Craig Moore or Stewart or Battcock, formerly widow of the testator, and her second husband William Frederick Battcock, as her curator and administrator-in-law. *seventh parties*, presented a Special Case for the opinion and judgment of the Court, dealing with, *inter alia*, the interest in certain debenture stock held by the testator at his death, being a surplus of the income of his estate not required for carrying out the trust purposes, and falling, in consequence, into intestacy.

The Case stated, *inter alia*—"(12) The estate of the testator at the time of his death consisted, *inter alia*, of £6000 4½ per cent. mortgage debenture stock of the Distillers Company, Limited. This stock is secured over certain heritable and leasehold property of the company in terms of or in manner set forth in the deed of agreement, dated 13th, 14th, and 15th days of April 1887, executed by and between the said company of the one part and certain trustees for the holders of the said stock of the other part, and was redeemable in the company's option after 1st January 1907, on six months' notice, at £110 per cent."

Clause 2 of the deed of agreement provided, *inter alia*—"The said stock shall be, and shall have the incidents of, personal estate."

The following *question of law* was, *inter alia*, stated:—"Is the widow entitled to *jus relictæ* . . . (*b*) out of the income of the investment of £6000 . . . mentioned in statement 12?"

Argued for all the parties other than the seventh parties—The bond in question bore interest for a tract of time current at the testator's death, and was therefore, under the Act 1661, cap. 32, heritable *quoad* the widow's rights—*Downie* v. *Downie's Trustees*, July 14, 1866, 4 Macph. 1067, 2 S.L.R. 204, *Dawson's Trustees* v. *Dawson*, July 9, 1896, 23 R. 1006, 33 S.L.R. 749; *Bennett's Executrix* v. *Bennett's Executors*, 1907 S.C. 598, 44 S.L.R. 486; *Stark* v. *Stark*, 1910 S.C. 397, 47 S.L.R. 398; *Heath* v. *Grant's Trustees*, 1913 S.C. 78, 50 S.L.R. 38.

Argued for the seventh parties—The clause in the agreement expressly provided that the stock in question should have the incidents of personal estate, and this took it out of the ambit of the statute and the cases referred to. [*Cp.* The Companies Clauses Act 1863 (26 and 27 Vict., cap. 118), section 23, not referred to.]

At advising—

LORD DUNDAS—[*In dealing with the widow's claim for jus relictæ*]—The trust estate at the testator's death consisted, *inter alia*, of (*a*) £6000 4½ per cent. mortgage debenture stock of the Distillers Company, Limited; (*b*) debenture bonds bearing interest at various rates payable half-yearly by the New Zealand and Australian Land Company, Limited; and (*c*) a sum of £10,000, being balance due to the testator of a loan by him to his brother Robert at interest for ten years from 1888, under an agreement. All these items bore interest for a tract of time current at the testator's death. They are therefore *prima facie* moveable *quoad* his succession, but heritable in a question of his widow's rights. But a special argument was presented for the widow in regard to the mortgage debenture stock of the Distillers Company. The agreement between that company and trustees for the stockholders

is printed *ad longum* in the appendix. The holders are given preferable security over the company's heritable property. The terms of the conditions of issue of the stock are set forth in Schedule A annexed to the agreement. Clause 2 of the agreement, after providing that the stockholders shall have and be subject to the whole rights, privileges, obligations, and others specified in the conditions of issue in Schedule A, ends with the words—"The said stock shall be, and shall have the incidents of, personal estate." Counsel for the widow founded upon these words as importing that this stock is declared to be, for all purposes, personal estate, and argued that it must therefore be subject to *jus relictæ* in a question with the widow of a deceased stockholder. It seems to me improbable that the framers of this agreement had any such case in mind, or had any intention to effect a variation on the application of the general law of the land. I think it is more reasonable to suppose that the words quoted—though redundant, perhaps, and unnecessary—were introduced in order to make as clear as possible what is expressly stated in article 10 of Schedule A, viz., that executors of a deceased stockholder were alone to be recognised by the company as having any title to the share registered in his name. But, however this may be, the words appear to me to be, in my view, too wide and vague to achieve the purpose for which they are founded on by counsel for the widow. "Personal estate" or its "incidents" might refer equally well to estate personal at common law, or to estate made personal by the Statute 1661, cap. 32. But the latter view would not suit the widow's contention at all It would exclude her claim. I think, though the point is novel and a little puzzling, that her argument must fail. I am therefore for answering branch (*b*) of the seventh question in the negative.

The LORD JUSTICE-CLERK and LORD GUTHRIE concurred.

LORD SALVESEN was absent.

The Court answered branch (*b*) of the seventh question of law in the negative.

Counsel for the First Parties—D. P. Fleming. Agents—Webster, Will, & Company, W.S.

Counsel for the Second and Third Parties—Blackburn, K.C.—Maconochie. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Fourth Parties—Murray, K.C.—Maclaren. Agents—Cumming & Duff, S.S.C.

Counsel for the Fifth Parties—Moncrieff, K.C.—R. C. Henderson. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Sixth Parties—Fleming, K.C.—Inglis. Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Seventh Parties—Constable, K.C.—Kemp. Agents—Wishart & Sanderson, W.S.

Tuesday, January 6, 1914.

SECOND DIVISION.

AITKEN *v.* ROBSON.

Bankruptcy—Sequestration—Discharge—Nobile Officium—Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *secs.* 69 *and* 70.

In a sequestration the creditors elected a trustee but failed to decide on the sufficiency of the caution, and the election of the trustee was never confirmed by the Sheriff. After the lapse of seven years, it being no longer competent under the Bankruptcy (Scotland) Act 1913 for the trustee to obtain confirmation, the Court, on the petition of the bankrupt, in the exercise of its *nobile officium*, without making a remit to the Accountant of Court, discharged the bankrupt but refused to reinvest him in his estates.

Thomas Aitken, notary public, Edinburgh, an undischarged bankrupt, presented a petition to the Court for his discharge and for reinvestment in his estates.

The petition was as follows:—"That on 22nd November 1906 the petitioner's estates were sequestrated by the Lord Ordinary on the Bills on the petition of William Robson, S.S.C., Edinburgh. On 3rd December 1906 the statutory meeting of creditors for the election of a trustee and commissioners was held conform to certified copy of the minutes of said meeting, which is referred to. On 4th December 1906 said proceedings were duly reported to the Sheriff at Edinburgh in terms of the Bankruptcy (Scotland) Act 1856, section 70. That no security or caution for his intromissions has been found by or for any one as trustee in terms of section 72 of the foresaid statute, nor has the election of a trustee ever been confirmed by the Sheriff in terms of section 73 of said statute. That in fact no step has been taken in the sequestration since the proceedings at the foresaid meeting of creditors were reported by the preses of the meeting to the Sheriff. That if the sequestration proceedings had followed their normal course the petitioner would now have been entitled to apply for and to obtain his discharge, for although he has not paid his creditors 5s. per £1 on the amount of his indebtedness to them he is prepared to satisfy the Court that his failure to do so has arisen from circumstances for which he cannot justly be held responsible, all in terms of the provisions of the foresaid statute and also of the Bankruptcy and Cessio Act 1881, section 6. That owing to the failure to find security for the trustee's intromissions as resolved on at the said meeting of creditors, and to the failure of the creditors to proceed in the sequestration, the petitioner is deprived of his statutory right to apply in ordinary course for his discharge or to take any step at all in the sequestration, and he is therefore obliged to make the present applica-