

the opinion, which he still holds, that it is not for the benefit of the trust estate that the executors should continue to be partners of the said company after the said William Neilson's death, or should enter into litigation with the company on that question, but that it is rather for the benefit of the trust estate that the estate should receive from the company the sum to which the estate is entitled on the footing of William Neilson having ceased to be a partner of the company at his death and of his executors having right to be paid out his interest, all in terms of article 10th of said contract of copartnership, while the other trustees, the said Hugh Neilson and James Neilson, are by the terms of the said trust-disposition and settlement precluded from voting or taking part in the question on which the said other two trustees differ: Find (8) that in these circumstances the pursuer Mrs Neilson, with concurrence of certain of the beneficiaries under the said trust-disposition and settlement, is not entitled to maintain the action at her instance, and dismiss the said action and decern: Further, in the action at the instance of the pursuer Hugh Neilson junior, Find that having regard to the provisions of the said contract of copartnership, and to the fact that the defenders in that action, the remaining partners of the company, desired to continue the business thereof, notwithstanding the notice by him to them of 4th May 1883, and the service of the summonses at his instance, the said Hugh Neilson is not entitled to decree in terms of the conclusions of the summonses at his instance, to the effect of having the business and the copartnership wound up, and its whole assets realised and divided as concluded for: Further, in respect it is not disputed that the copartnership carried on after 31st May 1882 was a partnership-at-will terminable by notice by any of the partners, dismiss the first conclusion of the said action; assolvie the defenders from the conclusions thereof; reserving to the said Hugh Neilson his right either under the said notice of 4th May 1883, or any notice he may thereafter give, to have the company dissolved to the effect of his being paid out his interest therein, in terms of the provisions of the said contract of copartnership, and decern: And as regards expenses in the action at the instance of Mrs Neilson, as between the pursuer Mrs Neilson and the Mossend Iron Company, Find no expenses due to or by either party prior to the interlocutor of 7th March last beyond such expenses as have already been found due, but find the Mossend Iron Company entitled to expenses since the date of that interlocutor: Further, find the defender James Thomson entitled to expenses: And in the action at the instance of Hugh Neilson junior, find him liable in expenses to the defenders therein; and remit to the Auditor to tax the accounts of expenses respectively found due herein, and to report."

Counsel for Mrs William Neilson — Pearson — Guthrie. Agents—J. & J. Ross, W.S.

Counsel for the Mossend Iron Company (Reclaimers) — Mackintosh — Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Hugh Neilson junior—Trayner Graham Murray. Agents—H. B. & F. J. Dewar, W.S.

Counsel for William Neilson's Trustees—J. P. B. Robertson—Low. Agents—Morton, Neilson, & Smart, W.S.

Friday, December 19.

SECOND DIVISION.

[Lord Kinnear, Ordinary.]

COMMISSIONERS OF SUPPLY OF FIFESHIRE v. MAGISTRATES OF DUNFERMLINE AND OTHERS.

Burgh—Rating—Assessment—Lunatics (Scotland) Act 1857 (20 and 21 Vict. c. 71)—Militia (Scotland) Act 1854 (17 and 18 Vict. c. 106)—Contagious Diseases Animals Act 1878 (41 and 42 Vict. c. 74)—Prisons Act 1877 (40 and 41 Vict. c. 53).

A district, 1000 acres in extent and consisting of villages and farms, lay within the royalty of a burgh, as extended by a local Act, but was beyond the Parliamentary boundary as defined by the Reform Act 1832. *Held* that the commissioners of supply for the county in which the burgh was situated were not entitled to impose assessments on the lands and heritages within this district for the purposes of the Lunatics (Scotland) Act 1857, the Militia (Scotland) Act 1854, or the Contagious Diseases (Animals) Act 1878.

Counsel for Pursuers—J. P. B. Robertson—Gillespie. Agent—William Black, S.S.C.

Counsel for Defenders — Trayner — Shaw. Agents—Morton, Neilson, & Smart, W.S.

Friday, December 19.

SECOND DIVISION.

[Sheriff of Stirlingshire.]

BEESELY & COMPANY v. M'EWEN.

Sale—Delivery—Risk—Res perit domino.

B. in Birmingham sold to M. in Stirling a wire-straightening and cutting machine, to be delivered on railway truck at Birmingham. On arrival of the machine at Stirling, M. objected to it as disconform to contract. By arrangement between the parties it was returned to B. to be examined and to have any alterations made upon it which he might find necessary to make it conform to contract, he paying the carriage if it should be found defective. After certain alterations had been made upon it, the machine was again delivered by B. at the railway station at Birmingham. It arrived at Stirling in a broken condition, and M. refused to take delivery of it and intimated his refusal to B. In an action by B. for the price of the