lease "shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor," in manner therein mentioned. There is some apparent plausibility in this view; and it may be a hardship in some cases that the heritor should pay an assessment according to the actual value, and not according to the rent he receives. But it seems difficult to hold that the clause in question was intended to remedy this or any other hardship; and it is certain that, according to the pursuer's interpretation of it, it would create more injustice than it could possibly remedy. If equity had been the object of the clause it would have taken into view, not the original duration of the lease from the term of entry, but the period for which it had still to run at the time of the valuation and assessment. It may be hard that a proprietor, at an early part of a long lease, shall pay an assessment according to the actual value of a subject which he is to be kept out of for 100 years, and for which he is only to get in the meantime a nominal rent. But, on the other hand, it would be as hard or much harder that every tenant in a lease longer than 21 years should, even in the last year of his possession, pay a great share of the expense of building a church from which he is not to derive the slightest benefit, and for which he was in no respect liable by the law as it previously stood, and as contemplated when the lease was entered into. Such an inversion of the rights of parties, and such an alteration of a voluntary contract, would be eminently unjust, and is not to be presumed to have been intended. Again, under the clause in question, where long leases are dealt with, there are many cases where the hardship may lie quite the other way from what the pursuers urge. The tenant, though paying a small rent, may have begun by paying a large grassum; or he may be bound, as generally happens in a building lease, and as seems here provided for, to leave buildings on the ground such as will be a great boon to the landlord. To lay upon the lessee the church assessment would in such circumstances be most inequitable. Yet none of these considerations are here taken into view, although they were manifestly essential if equity was the object of the clause. Leases are matters of contract as to which parties are free to fix their own rights and liabilities. To alter the effect of subsisting leases in this way would be a violent proceeding on the part of the Legislature; and as to future leases the parties may always regulate their rights so as to meet this and special cases in any way they like. Looking to these considerations, it seems much more probable that the object in view in the 6th section was merely some matter of convenience with a view to the collection of assessments, without its being intended to effect any change of ultimate liability. The words used, indeed, in the 6th section are too narrow and limited to have the operation contended for. The only substantive enactment in the section that can be argued to impose liability is, that "the lessee under such lease shall be deemed and taken to be also *the proprietor* of such lands and heritages *in the sense of this Act.*" What follows relates not to the liability, but to the relief competent to the lessee. But the natural meaning of this substantive enactment seems to be far short of what the pursuer contends for. The lessee is to be the proprietor *in the sense of this Act*, and this may have certain effects, such as making him the party to whom notice is to be given under the 5th section. The clause may even go the length of making the lessee be considered the same as a liferenter or other person in the actual receipt of the rents and profits in terms of the interpretation clause of the Act. But this will not make the lessee any more than a liferenter liable to a church assessment. If such a result was intended it would have been easy in the 6th clause to say that the lessee in the long lease was to be deemed and taken as the proprietor or heritor in the sense of *all Acts of Assessment* imposing liability upon owners or heritors. That would have been a distinct and explicit enactment, but it would certainly not have been easily reconciled with the declaration at the end of the Act, that nothing contained in it was to render liable to assessment any person not previously liable. There is one case which may seem to explain and satisfy the words of the enactment in clause 6th. By the 44th section of the Poor Law Act it is enacted that lease-holders under a building lease shall, in reference to the poor assessment, be deemed and taken to be the owners of the houses built. Here, then, is an enactment in a previous statute, by which certain lessees are liable as owners, and in that case the enactment of the 6th section of the Valuation Act, that certain lessees shall also be deemed proprietors, may come into play. A lessee under a long lease who possesses both land and houses, may be called upon in the first instance to pay poor assessment for both, and may then get his relief from the proper owner to the extent of the rent which he pays for the mere land. I do not say that the 6th section is well expressed or framed even in this view; but this possible case may have been in the mind of the framers of the Act, and may account for its terms. I may express here my satisfaction that we thus escape the necessity of meeting the ulterior anomalies that the pursuer's view of the statute might lead to in reference to the division of the area of a church. The apportionment of the area and the liability for the assessment ought indisputably to go together. But it is as yet unheard of in the law of Scotland that the area of a church should be apportioned among any other parties than the true and proper heritors. Upon the whole we think that the only safe and sound construction of the statute is to hold that it does not impose on the defenders a liability to which they were not previously subject, and consequently that they must be assoilzied from the conclusions of the actions.

The judgment of the Lord Ordinary finding the Clyde Trustees liable was accordingly recalled.

R. N.—HENRY GARDINER.

Counsel for Reclaimer—Mr Gordon and Mr Guthrie Smith. Agent—Mr Livingstone, S.S.C.

Counsel for Respondent—Mr Gifford and Mr Black. Agent—Mr Curror, S.S.C.

The question in this case, the circumstances of which have been previously reported, is whether a bequest to "relations" by a testator was a good bequest, or one void from its uncertainty and vagueness. The case was advised to-day—LORD BENHOLME delivering the judgment of the Court. His Lordship having narrated the question as it arose in the case, said—The argument was addressed to us to the effect that had the testator intended to benefit a limited class such as the heirs, who would have taken *ab intestato*, he would just have left the law to take effect. But it is obvious that this testator did not intend the law to come into operation, for he makes the bequest of his furniture to both sides of the house. His relations were to get one half, and the other half was to go to the relations of his widow at her death, if she did not enter into a second marriage. Had she married a second time the half intended for her relations would have recurred to the parties who were to take the other half. The Lord Ordinary has found the bequest not to be void by reason of uncertainty. The tendency of our later law is to strive after an interpretation of a bequest which will give effect to a testator's will rather than make it void. I think the natural interpretation of the bequest in the present case is that "relations" should become heirs *ab intestato.*

The other Judges concurred.

Saturday, Nov. 18.

FIRST DIVISION.

PETN.—BAIRD AND OTHERS *v.* THE TOWN COUNCIL OF DUNDEE.

Counsel for Petitioners—Mr Patton and Mr Thoms. Agents—Messrs Lindsay & Paterson, W.S.

Counsel for Respondents—Mr Gordon and Mr Fraser. Agents — Messrs Maclachlan, Ivory, & Rodger, W.S.

This petition prayed for the sequestration of certain property mortified in trust by four persons, named respectively Clark, Guild, Gibson, and Hallyburton, to the Town Council of Dundee, and the appointment of a judicial factor. The ground of the application was that the Town Council had been in the practice of lending the funds of the mortifications to themselves, and mixing them up with the town's general funds. The application was opposed on the ground that public trustees, such as a town council, were entitled to do what was complained of, and that this principle was acted on generally throughout Scotland. The case was heard in June last, when the judges were unanimously of opinion that a town council was not entitled any more than any other trustees to lend the trust funds to itself. In consequence of this opinion the funds have been during the vacation invested on a proper footing; and to-day the Court held that it was therefore not necessary to proceed farther in the application except to find the petitioners entitled to the expenses they had incurred—which was done.

MP.—LAIRD'S TRUSTEES *v.* LAIRD'S LEGATEES.

Counsel for Laird's Legatees—Mr Patton. Agents —Messrs J. A Campbell & Lamond, C.S.

Counsel for Laird's Trustees—Mr Millar. Agents —Messrs Adam & Sang, S.S.C.

This is a very complicated multiplepoinding, which has been in dependence since 1848, in regard to the funds of the late firm of John Laird & Sons, merchants in Port-Glasgow. A remit had been made to an accountant, who made a long report on which parties had been heard. In the discussion on that report a view of the case had been presented for the first time as to the liability of the trustees of Mathew Laird, one of the partners, to account for the profits of the firm. It was objected that it was too late to state this matter at so advanced a stage of the cause; but the Court held that the party stating it was not foreclosed from doing so, although the delay which had taken place might affect the question of expenses. It was considered, however, necessary to have a statement from the accountant as to the arithmetical result which the new view, if given effect to, would have on the accounting betwixt the parties, and a remit was accordingly made to him to prepare such a statement.

SECOND DIVISION.

BRONEVER *v.* BRONEVER.

Counsel for the Pursuer — Mr Fraser and Mr Christie. Agent—Mr Barton, S.S.C.

No appearance for the defender.

This is an action of divorce by a wife against her husband on the ground of desertion. The pursuer is a native of and resides in Scotland, and the defender is a native of and resides in Holland.

The pursuer alleges that she and the defender, then a seaman on board a Dutch vessel temporarily at Sandhaven, were on the 31st of August 1854 irregularly married by appearing before a justice of the peace at Fraserburgh, and acknowledging themselves to be married persons; that on the following day she sailed with the defender on board his vessel for Dantzic; and after a year's absence from Scotland, during which they lived together and cohabited as husband and wife, they both returned to Pitullie, in the county of Aberdeen. The pursuer further alleges that after a residence there of five months she and the defender contracted a regular marriage; that the defender took a house, which was occupied by him and her for two years, "during which the defender made several voyages as a seaman in ships sailing from Fraserburgh, always returning to his house there, which he regarded as his home." The pursuer finally alleges that in 1858 she was deserted by her husband, and that he has since then contracted a second marriage in the Netherlands. The summons was served edictally and also personally on the defender at his foreign domicile. The Lord Ordinary (Ormidale) holding the domicile of the defender to be abroad, held that the Court had no jurisdiction to entertain the action, on the general rule that a divorce *a vinculo matrimonii* can only be pronounced by the competent court within the jurisdiction where the parties have their domicile.

The case came up to-day on a reclaiming note for the pursuer. Before proceeding further the Court allowed the pursuer to put in a condescendence as to what she averred and offered to prove in regard to the domicile of the defender.

SUSPN.—PEARSON *v.* M'GREGOR.

Counsel for the Complainer—Mr Pattison. Agents —Messrs R. & R. H. Arthur, S.S.C.

Counsel for the Respondent—Mr W. M. Thomson. Agent—Mr John Ross, S.S.C.

This was a suspension of a charge on a promissory note for £42, granted by the complainer to the respondent, in remuneration of his services as trustee on the complainer's sequestrated estate. The complainer submitted that the promissory note was *ipso jure* null, except to the extent of £7, 6s. 1d, being the maximum rate of 5 per cent. of commission, to which the respondent was entitled as trustee. The respondent's defence was that the fee was in itself a reasonable one, and that no objections were made by the complainer himself until diligence was done on the promissory note.

The Court held that the complainer had not averred relevant reasons of suspension, and refused the note of suspension.

OUTER HOUSE.

(Before Lord Ormidale.)

THE LORD ADVOCATE ON BEHALF OF THE WAR DEPARTMENT *v.* LANG, PROCURATOR-FISCAL OF GLASGOW.

Counsel for War Department—Mr Henry J. Moncreiff. Agent—Mr W. Waddell, W.S.

Counsel for Procurator-Fiscal—Mr A. B. Shand. Agents—Messrs Campbell & Smith, S.S.C.

The Crown raised this action for the purpose of having suspended a charge threatened to be made against it for £37. 10s. 6d., being the cost of relaying the foot pavement in Gallowgate, Glasgow, opposite the infantry barracks. Various pleas were stated by the parties, but latterly a minute was lodged stating that as they were both desirous to have a decision in this process with respect to the liability of the Crown or the War Department, under the Glasgow Police Act 1862, to repair the pavement, they departed from all pleas which might interfere with such decision being pronounced.

LORD ORMIDALE intimated to-day that after giving consideration to the case he felt himself under the necessity of holding, in conformity with English precedents, that the Crown was not liable to pay the sum charged. The charge will therefore be suspended, but no expenses will be found due to the Crown.

(Before Lord Kinloch.)

MP.—LYON *v.* MARTIN.

This case was in the roll to-day for the purpose of closing the record. The parties were ready to renounce probation. The 11th clause of the recent Act of Sederunt provides that in such cases a minute to that effect shall be subscribed by the counsel for the parties and lodged in process. It was proposed