make it habitable for his family, lives in it with his wife as long as he is in this country, and leaves his wife to live in it while he is absent from this country, it appears to me that he is still occupant as tenant notwithstanding his absence. I am of opinion, therefore, that the question should be answered in the affirmative.

LORD STORMONTH DARLING—I entirely concur with your Lordship. If this had been a claim under the "household qualification," I think the Sheriff's judgment would probably have been right, because he would then have been obliged to inquire whether the claimant was an "inhabitant occupier."

But the claim here is under the "county occupation franchise," and I agree with your Lordship that there has been sufficient "actual personal occupancy" as that phrase is used in the 6th sec. of the Act of 1868, notwithstanding the appellant's absence for some months from this country. I therefore agree that the appellant is entitled to be enrolled, and that the question in the case ought to be answered in the affirmative.

LORD JOHNSTON—I think that the only difficulty in this case has been created by an attempt to confuse the county occupation franchise with the county household franchise, and by citing cases on the construction of the provisions which introduced the latter as authorities for the construction of the provisions which introduced the former.

For the household qualification in counties the Act of 1884, section 7 (4), refers one back to the Act of 1868, section 3, where the qualification is defined as that of "inhabitant-occupier, or owner, or tenant of any dwelling-house."

But the Act of 1884, section 5, defines the qualification for the occupancy franchise as simply "occupying any land or tenement in a county . . . of the clear yearly value of not less than £10." And if by reference that section requires one to consider the Acts of 1868 and 1832, then that of 1868 uses the phrase "actual personal occupancy," and that of 1832 the phrase "in the occupancy as proprietor, tenant, or liferenter."

A man cannot inhabit except personally, but he may occupy personally without inhabiting. In the present case I think that Richard Jones has done so, and that he is therefore entitled to be retained on the register. I therefore answer the question in the case in the affirmative.

The Court answered the question in the affirmative.

Counsel for the Appellant—Blackburn. Agents—Russell & Dunlop, W.S.

Counsel for the Respondent—T. B. Morrison. Agent—T. & T. Galletly, S.S.C.

COURT OF SESSION.

Saturday, February 3.

FIRST DIVISION.

[Lord Low, Ordinary.

BARBOUR *v.* RENFREWSHIRE LOWER DISTRICT COMMITTEE.

Public Health—Infectious Diseases—Milk Supply—Prohibition of Milk Supply by Order of Sheriff—Compensation for Stopping Milk Supply from Dairy—Liability of Local Authority of District where Dairy is Situated—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 60 (2), (3). (7), *and* 164.

An outbreak of infectious disease having occurred in a burgh, the medical officer thereof intimated to the local authority of the adjoining county that he had evidence against the milk supplied from a farm within its district. The county local authority having resolved that no order prohibiting the farmer from supplying milk was necessary, the burgh local authority appealed to the Sheriff, who granted the order. The farmer claimed compensation under section 164 of the Public Health (Scotland) Act 1897. Both local authorities denied liability, maintaining that it was the other which was liable.

Held that the county local authority in whose district the farm was situated was the one liable.

The Public Health (Scotland) Act 1897, section 60, enacts—"(1) If the medical officer of any district has evidence that any person in the district is suffering from an infectious disease attributable to milk supplied within the district from any dairy situate within the district . . . such medical officer shall visit such dairy and . . . (2) If the medical officer of any district has evidence that any person in the district is suffering from any infectious disease attributable to milk from any dairy without the district, or that the milk from any such dairy is likely to cause any such disease to any person residing in the district, such medical officer shall forthwith intimate the same to the local authority of the district in which such dairy is situate, and such other local authority shall be bound forthwith by its medical officer to examine the dairy . . . and by a veterinary surgeon . . . to examine the animals therein, previous notice of the time of such examination having been given to the local authority of the first-mentioned district in order that the medical officer or any veterinary surgeon . . . may, if they so desire, be present at the examinations referred to, and the medical officer of the second-mentioned local authority shall forthwith report the results of his examination, accompanied by the report of the veterinary surgeon, if any, to that local authority or any committee of that local authority appointed . . . to deal with such matters. (3) The

local authority of the district in which the dairy is situated, or any committee appointed for that purpose, shall meet forthwith and consider the reports together with any other evidence that may be submitted by the parties concerned, and shall either make an order requiring the dairyman not to supply any milk from the dairy until the order has been withdrawn by the local authority, or resolve that no such order is necessary. . . . (7) It shall be open to any local authority or dairyman aggrieved by any such resolution or order or withdrawal of order, to appeal in a summary manner to a sheriff having jurisdiction in the district in which the dairy is situated, and the Sheriff may either make an order requiring the dairyman to cease from supplying milk, or may vary or rescind any order which has been made by the local authority, and he may at any time withdraw any order made under this section. Pending the disposal of any such appeal the order shall remain in force. . . ."

Section 164 enacts—"Full compensation shall be made out of any fund or assessment applicable to the purposes of the Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act except when otherwise specially provided. . . ."

On 23rd February 1905, John Barbour, dairy farmer, High Murdieston, Renfrewshire, raised an action against the District Committee of the Second or Lower District of the County of Renfrew as local authority within that district under the Public Health (Scotland) Act 1897, in which he, *inter alia*, sought declarator, secondly, that the defenders were liable under section 164 of that Act to pay to him such compensation as he was entitled to under that Act for damage sustained by him through the exercise of one of the powers of the said Act.

In or about the month of September 1904 there was an outbreak of enteric fever in the burgh of Greenock. The pursuer supplied milk to certain customers in the district in which the epidemic occurred. The local authority of the burgh of Greenock, being of opinion, on the advice of their Medical Officer of Health, that enteric fever was likely to be spread throughout the burgh by the delivery of milk from High Murdieston Farm, resolved to ask the defenders, as the local authority of the district in which the farm was situated, to exercise the power conferred on them by section 60 of the Public Health (Scotland) Act 1897 of stopping the milk supply from the farm. They accordingly made an application to the defenders to pronounce an order stopping the supply of any milk from the farm of High Murdieston. A special meeting of the defenders' executive sub-committee was called and met on 19th September 1904. After considering the application, correspondence, reports, and information before them, the meeting determined that they were not justified in pronouncing an order requiring the pursuer to cease from supplying any milk from the said farm of High Murdieston. The local authority of the burgh of Greenock appealed against this resolution to the Sheriff-Substitute of the counties of Renfrew and Bute at Greenock, asked him to rescind it, and to give effect to their first application to the defenders. The Sheriff-Substitute having heard parties' procurators pronounced an order on 26th September 1904, ordaining and ordering the pursuer to cease from supplying milk from the farm of High Murdieston.

Immediately after this order was pronounced the pursuer intimated to the defenders that he held them liable in compensation, and on 6th December 1904, when the prohibition had been withdrawn, he again intimated his claim and sent a note of the amount.

The defenders repudiated liability, and stated that his claim should be directed against the local authority of the burgh of Greenock, who, however, also repudiated liability.

The pursuer pleaded—"(2) The pursuer having suffered damage by reason of the exercise of a power conferred on the defenders by the said Act, is entitled to compensation therefor from them, in virtue of the provisions of the said Act, and decree should be pronounced in terms of the second declaratory conclusion of the summons."

The defenders admitted that the pursuer had suffered loss but denied liability.

On 7th July 1905 the Lord Ordinary (Low) pronounced the following interlocutor—". . . Finds, decerns, and declares in terms of the conclusion of the summons: Finds the defenders liable in expenses. . . ."

The defenders reclaimed, and argued—It was admitted that compensation was due, and the sole question was from what source it should come. The Act left that vague, but the burgh local authority had in fact procured the order of the Sheriff stopping the supply of milk from the farm in question, and in so doing was acting in the interests of the inhabitants of the burgh, therefore it should be liable in compensation.

Counsel for the pursuer and respondent was not called upon.

LORD PRESIDENT—In this action a farmer in Renfrewshire sues the District Committee of the Lower District of the County of Renfrew as Local Authority under the Public Health Act of 1897, and seeks to have it declared that he is entitled to compensation from them in respect of damage which he has suffered by reason of the exercise of one of the powers of the Act of 1897, to wit, an order by which his sale of milk was for a period stopped. The defence of the local authority is that they are not the persons under the circumstances truly liable, the persons truly liable according to them being the burgh of Greenock. That defence arises from the circumstances under which the stoppage order was made. The milk of the pursuer's dairy having become suspected, the matter was started by the Medical Officer of the Burgh of Greenock, who made an intimation in terms of sub-sec. 2 of sec. 60 of the Act. It is con-

venient, I think, here to remind your Lordships precisely of what the provisions of the Act upon this matter are. They are embodied in sec. 60. The first sub-section provides for the case of the medical officer of a district having evidence that persons are suffering from infectious disease attributable to milk supplied within the district, and it prescribes that he shall go and make an inspection of the dairy accompanied by a veterinary surgeon, and that the report of his examination, coupled with the report of the veterinary surgeon, shall then be submitted to the local authority of that district. The second sub-section makes provision for cases where the infectious disease is attributable to milk supplied by a dairy without the district, and in that case the medical officer of the district within which the mischief for the moment is being done is to intimate the same to the local authority of the district in which the dairy is situate, and there is again provision for a visit, accompanied by a veterinary surgeon, but in this instance what I may call the complaining district is allowed to go to the inspection along with the officials of the district in which the complained of dairy is situate. After these inspections and reports, then in either case the matter goes on before the local authority of the district in which the dairy is situate, and that local authority may make if it wishes a stopping order. In the event of its either making or refusing a stopping order, an appeal is given under sub-sec. 7, the appeal being given either to the dairyman, whose interest is obvious, or to the local authority. Now, the latter of course can only mean that in the case where one local authority has applied to the other local authority the complaining authority has a right of appeal, because it goes without saying that a local authority cannot take an appeal against itself. When the appeal is taken then the Sheriff becomes master of the situation, and he may pronounce whatever order he thought the local authority of the district in which the dairy is situated ought to have pronounced. Now, reverting again to the facts of this present case, these steps having been gone through, the Local Authority of the Lower District of Renfrewshire refused to make an order. Upon that the Local Authority of the Burgh of Greenock took an appeal to the Sheriff, and the Sheriff, taking the view that an order ought to have been made, pronounced the order which the Local Authority of the Lower District of Renfrewshire, according to his view, ought to have made. The order was kept in force a certain time and was afterwards withdrawn. The present action is founded upon section 164 of the same statute, which ordains "that full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act." Now, as I have said, the Local Authority of the Lower District of Renfrewshire say that the proper persons to make compensation are the Burgh of Greenock, because they say the Burgh of Greenock were the parties complaining, and it is they that are being protected. I do not think that view is right, and I think the judgment of the Lord Ordinary which is reclaimed against is perfectly sound. I think we must remember that this is a Public Health Act, and that, as its title denotes, its object is to make such provisions as may be necessary to protect the health of the public in general, not particularly to safe-guard one district or another. Further, for the purposes of the Public Health Act the country is divided up into administrative districts, and each local authority in the administrative district is supreme in its own district. Taking the case of milk, which often goes away from one district to another, the statute had to make provision in one way or another for what was to be done if a particular district found it was being supplied with milk which it thought was infected, and had not direct jurisdiction over the supplier of that milk by reason of the fact that the supplier was not within its own district. It might have given powers to one district to, so to speak, descend into the territory of another and seize what it considered to be a wrongdoer, but it did not. On the contrary, it provided that the complaining district, if the subject of complaint was not in its own district but was in somebody else's district, must set that other authority in motion, and then if the determination of that authority was not to its liking it had an appeal to the Sheriff. But none the less, I think it is quite clear that when the Sheriff comes to pronounce his interlocutor and decree he really does it as for the local authority who could themselves have pronounced the decree in the form he says it ought to have been pronounced in the first instance, in which case no appeal to him would have been necessary.

Accordingly, it seems to me that there is no possible ground under the general frame of the statute for getting any compensation except out of the local authority which itself truly emits the order, even although it has been made to emit that order by the superior judgment of the Sheriff telling them to pronounce a certain order which, if they had been well advised, they would have pronounced in the first instance.

Accordingly I am of opinion that the pursuer is entitled to the declarator that he asks for and that the reclaiming note should be refused.

The question of the *quantum* of damages is a perfectly different thing, but it is not for this Court, because under the provisions of the statute, if the amount claimed is more than £50, it is to be ascertained in a certain way by an arbiter appointed under the provisions of this statute, and therefore as to how far this particular man was damnified by the order is a question that is still entirely open.

LORD M'LAREN—If a corporation or public authority is invested by a statute with what are termed compulsory powers, whether

those powers involve the taking of land, or whether they involve merely the injuriously affecting the property or the trade of another person, I should hold that in the absence of directions to the contrary it is the person whose property or trade is interfered with who is to receive the compensation, and the person who is empowered to interfere with it who is to pay. It might be otherwise provided. A statute might empower Peter to do the damage and Paul to pay for it, but in the absence of express declaration I should not attribute such an illogical, not to say inequitable, intention to the Legislature. It would therefore follow in the ordinary case that it is the local authority in whose name the order is issued, whether by itself or by the Sheriff, who must make payment—in this case the County Council of Renfrewshire. I should only wish to reserve my opinion upon a question that might possibly arise, and that would be, if at the instance of the burgh authority the County District made an order prohibiting the sale, and on appeal to the Sheriff that order was recalled, and then the 16th section provides that pending the appeal to the Sheriff the original order shall remain in force. It is quite conceivable that an argument in such a case might be maintained to enforce liability against the burgh authority for having obtained an order which was ultimately found to be improper, on the same ground as a party applying for interim interdict, afterwards recalled, may be made responsible for the damages caused by the interdict obtained on his representation. I am not expressing any opinion as to the soundness of such a contention, but a case might arise in which, upon grounds different from those of the present case, the criterion of responsibility might also be different.

LORD KINNEAR—I agree with your Lordship in the chair. The pursuer brings this action for compensation for loss which he says he has suffered by reason of the exercise of the powers of the Act. It is conceded on record that he has suffered loss and damage in consequence of a certain order which was pronounced in the exercise of the powers contained in the Act, and the only question is whether the authority liable to make good that compensation is the local authority of Greenock or the local authority of a county district in Renfrewshire. It must be conceded that the case is in exactly the same position as if the order complained of had been pronounced by the local authority of the county. In point of fact the local authority of the county declined to pronounce the order, but an appeal was presented to the Sheriff of Renfrewshire, and he, differing from the local authority, pronounced the order which they ought to have given at first. It is conceded that they are in exactly the same position now as if they had done from the first what the Sheriff found they ought to have done. Therefore the order of which the pursuer complains was an order of the local authority of Renfrewshire in the exercise of the powers conferred upon them by the Act and conferred upon nobody else. It appears to me to follow that if there is compensation for the exercise of that power payable by any local authority, it must be by the local authority which in fact executed the power, because that was the only authority which proceeded directly against the present pursuer, and it is no concern of his whether they are moved to proceed by their own medical officer or by some medical officer of some other local authority. Therefore it appears to me to follow that if compensation is due it must be paid by them. Whether compensation is due or not, or how much is due, is not a question for this Court, because that must be determined, as your Lordship has pointed out, by an arbiter to be appointed by the Local Government Board. In the meantime what we decide is—and all that we can decide is—whether, assuming the claim for compensation to be good, the liability lies against the one or the other of the two local authorities. I agree with your Lordship and the Lord Ordinary.

LORD PEARSON concurred.

The Court adhered.

Counsel for the Respondent and Pursuer—Guthrie, K.C.—Munro. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Reclaimers and Defenders—M'Clure, K.C.—Macmillan. Agent—J. Gordon Mason, S.S.C.

Tuesday, February 6.

FIRST DIVISION.

[Sheriff Court at Perth.

VAUGHAN *v.* NICOLL.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 1, *sub-sec.* 2 (*c*)—"*Serious and Wilful Misconduct*"—*Question of Fact or Law—Competency of Appeal.*

A farm servant was driving a lorry into town. Shortly after his setting out the servant was discovered lying injured on the road, the lorry being upset. There was no direct evidence as to the cause of the accident other than the servant's evidence, but the reins were found tied to a drag wheel on the front of the lorry. The Sheriff-Substitute found that the cause of the accident was the servant's tying the reins to the wheel and the horse's head having been pulled round so as to make it run back and upset the lorry, and he was of opinion that the servant's conduct amounted to serious and wilful misconduct in the sense of the Act, and held that he was therefore not entitled to compensation.

In an appeal *held* that the Sheriff-Substitute's decision was not subject to review, in respect that his finding that the applicant had been guilty of serious