to the terms of section 89, sub-sections 1 and 3, of 30 and 31 Vict. cap. 101, the pursuer was using the water for other than domestic purposes without having made an agreement with the Local Authority? Now, the important facts upon which this question is raised are stated in article 8 of the joint minute. That article sets forth that the pursuer has one horse and two cows, and sells all the milk he can spare, and that he has registered his premises, and obtained a certificate as a cowfeeder and dairyman under the Dairies Privy Council Order of 1878. It was maintained on the part of the pursuer that taking the water for his horse and cows was using it for a domestic purpose. The Sheriff is inclined to think that water supplied for a horse kept by a person for private use, or for a cow, the milk of which was to be used for his family, would fall within the words 'domestic use,' but that water supplied for animals kept for the purpose of trade would not fall within these words. It is admitted that the pursuer sells all the milk that he can spare, and that he is licensed as a dairyman. That being so, the water used for his cows was not applied to 'domestic use.' The distinction seems to be between water used by an inhabitant as a private person and water used by him in carrying on a trade or business."

The pursuer appealed to the Court of Session, and argued—The Local Authority derived all their powers from the Public Health Act, and under it no power was given to cut off any inhabitant's water by disconnection from the main supply for non-payment of rates. The question raised by the petitioner was whether they were entitled to do so.

The respondents replied—By the Water-Works Act 1847 the remedy of disconnection was given to water companies. It was not taken away by the Public Health Act; it was not inconsistent with its provisions; and therefore being an apt remedy in the circumstances was to be presumed to be continued. All they were bound to do under the Act was to take the supply "near" the premises. If payment was refused, their only remedy was to stop the water at the limit of their obligation to take it—that was to say, at the beginning of the pursuer's service pipe.

Authority for both parties—Public Health Act, sec. 89.

At advising—

LORD JUSTICE-CLERK—This is a case which in my opinion ought never to have come here. Parties have lodged a joint minute setting forth certain facts on which they are agreed, and *quoad ultra* renouncing probation, and craving a judgment on the record and productions, with the admissions therein contained, and apparently the Sheriff has been satisfied that these facts were sufficient for the decision of the case, for he says that he understands "that the question upon which these parties desired a decision was, Whether, looking to the terms of section 89, sub-sections 1 and 3, of 30 and 31 Vict. cap. 101, the pursuer was using the water for other than domestic purposes without having made an agreement with the Local Authority?" This is the only question which the Sheriff has decided, and his judgment is that the pursuer has used his water supply for other than domestic purposes, and is therefore liable to an additional assessment, and substantially the question for us ought to be whether he was right or wrong in his judgment. I think the Sheriff was clearly right, and I do not think the pursuer seriously disputed that he had used the water for other than domestic purposes, and that he was therefore bound to obey the assessment of the board or make another arrangement. In these circumstances the natural result would be that we should refuse the appeal, having no ground to do otherwise on the only question before us. But we have had argued to us another question, and that is, whether a local authority is entitled in such circumstances to stop the inhabitant's supply by cutting off his service pipe from the main, and it was contended that that was a remedy not given by the statute. On the best view which I can take of the terms of the statute, I am not satisfied that in refusing to allow the connection to subsist without an agreement being made the Local Authority were wrong. The only part of the statute which really bears upon the matter is the third sub-section of section 89. The first sub-section merely gives the local authority power to provide the supply and construct the necessary works, but then the third sub-section says—[*reads*]. If this had been a case where the householder had been left without a proper supply the question might have arisen, but in this case it does not arise. Therefore on the whole matter, without giving any definite opinion on the other matter of the remedy, I think the Sheriff has rightly decided the only matter raised in the case as it came before him, and that there are no grounds on which we can grant the prayer for interdict.

LORDS CRAIGHILL and RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court dismissed the appeal.

Counsel for Pursuer (Appellant)—J. A. Reid. Agents—Fyfe, Miller, Fyfe, & Ireland, S.S.C.

Counsel for Defenders (Respondents)—Baxter. Agent—William Black, S.S.C.

Wednesday, July 11.

SECOND DIVISION.

GARDNER AND OTHERS, PETITIONERS.

Public Company—Winding-up under Supervision of Court—Suspension of Diligence of Creditors—Companies Act 1862 (25 *and* 26 *Vict. c.* 89), *secs.* 84, 85, 87, 130, 147, 148, 151 163, *and* 164.

Certain creditors of a limited company, registered under the Companies Acts, raised actions for payment of their debts. About a month afterwards the company, being insolvent, went into voluntary liquidation. Thereafter the creditors having obtained decrees in their favour in their actions against the company, poinded its goods, and obtained warrants of sale. The liquidator of the company then petitioned

for and obtained from the Lord Ordinary on the Bills *interim* interdict against the creditors carrying out the sales. A petition was then presented under the Companies Acts by a director and a creditor, with concurrence of the liquidator of the company, praying for continuation of the winding-up under supervision of the Court, and to have these creditors restrained from further carrying out their diligence. The Court, on the ground that an order that the liquidation should proceed subject to the supervision of the Court would have the effect of restraining the diligence of the creditors, *directed* the liquidation to proceed under the supervision of the Court.

Question (*per* Lord Rutherfurd Clark), Whether the interdict granted in the Bill Chamber had been rightly granted?

Section 130 of the Companies Act 1862 enacts—"A voluntary winding-up shall be deemed to commence at the time of the passing of the resolutions authorising such winding-up."

Sec. 147—"When a resolution has been passed by a company to wind-up voluntarily, the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just."

Sec. 148—"A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court."

Sec. 151—"Any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court."

Sec. 163—"Where any company is being wound-up by the Court, or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents."

The Clyde Paper Stock Company (Limited) was constituted under memorandum of association, and incorporated under the Companies Acts in September 1881. The objects for which the company was established were the purchasing of waste paper and rags, and other materials for the manufacture of paper or other purposes, and re-selling them, and other purposes incidental thereto. The company carried on business in Glasgow till 1883, when, in consequence of its financial difficulties, it was unanimously resolved at a special general meeting held on 5th March of that year that the company should go into voluntary liquidation. This resolution was confirmed at an extraordinary general meeting held on the 26th of March, and John Macrae, accountant, was appointed liquidator. On the 18th February 1883 (and therefore prior to the resolution to wind-up) John Hughes, rag merchant, and James Cairns, skin and wool merchant, raised actions against the company in the Sheriff Court of Lanarkshire at Glasgow for payment of accounts incurred to them. The amount of Hughes' account was £152, and that of Cairns £58, 4s. The company lodged defences in both actions, and a diet for proof was fixed for the 18th April 1883. No appearance at the proof was, however, made by the company, and accordingly decree was, on the date last mentioned, pronounced against them in both actions for the sums above mentioned. On 24th April the respondents charged the company on the extract decrees, and on 2d May caused poindings to be executed of the stock and effects of the company in their store in Graham Street. They also obtained warrants of sale authorising the sale to take place on 14th May. On 8th May, however, a note of suspension and interdict was presented at the instance of the liquidator of the company for the purpose of preventing the respondents from following forth their diligence, and *interim* interdict was granted by the Lord Ordinary on the Bills on 12th May.

This petition was then presented to the Court of Session, under section 147 of the Companies Act 1862, by Robert Alexander Gardner, one of the directors of the company, and Thomas Gallacher, a creditor, with consent and concurrence of Macrae, the liquidator. The petitioners stated that they had also the concurrence of all or nearly all the creditors of the company other than Hughes and Cairns. They also stated that an investigation of the company's affairs showed free assets sufficient, exclusive of expenses, to pay a dividend on its ordinary liabilities of 10s. 4d. in the pound. The diligence of Hughes and Cairns, if carried out, would seriously prejudice the petitioners and the other creditors, and carry off the whole assets of the company, and give an undue preference to the parties doing diligence. Besides, the liquidator had at present an opportunity of selling, to great advantage for all concerned, the assets of the company upon which this *nexus* had been put, if allowed to do so. The petitioners prayed the Court to direct the continuance of the voluntary liquidation subject to its supervision, "and further, to stay and suspend the diligence raised and executed by the said John Hughes and James Cairns against the said Clyde Paper Stock Company (Limited) under and by virtue of the decrees and warrants of poinding and sale obtained by them respectively . . . and to restrain the said John Hughes and James Cairns from further carrying into effect said diligence against the assets of the said company."

Answers were lodged by Hughes and Cairns, in which they did not object to an order being pronounced continuing the winding-up under the Court's supervision, but maintained that as they had raised their action prior to the commencement of the winding-up, and had executed diligence prior to the presentation of the petition, the restraining order prayed for should not be granted, and that they should be allowed to follow forth their diligence against the poinded effects.

The arguments appear from Lord Craighill's opinion.

Petitioners' authorities—*Turnbull* v. *Benhar Coal Company*, Feb. 6, 1883, *ante*, p. 366; *National*

Bank v. *Macqueen, ante*, vol. xviii. p. 683; *Sdeuard* v. *Gardner & Son*, March 10, 1876, 3 R. 577; Buckley on the Companies Acts, p. 206; *ex parte Parry*, 33 L.J., Chan. 245; *Smith, Fleming, & Company's* case, L.R., 1 Chan. App. 538; *Vron Colliery Company*, L.R., 20 Chan. Div. 442.

Respondents' authorities—*Sdeuard (supra cit.)*; *Clark* v. *Wilson*, June 7, 1878, 5 R. 867; *The Dublin Exhibition Palace Company*, Ir. Rep., 2 Eq. 158; *Weston's* case, L.R., 4 Chan. App. 20; *Plas-yn-Mhowys Coal Company*, L.R., 4 Eq. 689; *Hill Pottery Company*, L.R., 1 Eq. 649; *Millwood Colliery Company*, 24 Weekly Rep. 898.

At advising—

Lord Craighill—The petitioners here pray—first, for an order directing that the voluntary winding-up of the Clyde Paper Stock Company (Limited) should continue, but subject to supervision by the Court; and secondly, for a sist of diligence raised and executed by the creditors who are respondents in this application, against the assets of the company after a resolution to wind up by voluntary liquidation had been passed and confirmed by the company. The respondents do not object to the former part of the prayer provided the latter shall be refused, and they, in place of being restrained, shall be allowed to prosecute to the end their diligence against the poinded effects of the company. The controversy thus raised is what now awaits determination.

The jurisdiction of the Court in these matters is conferred by section 147 of the Companies Act 1862, whereby it is enacted that "When a resolution has been passed by a company to wind up voluntarily the Court may make an order directing that the voluntary winding-up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just." There are two things which may be done by the Court. The one is to grant the order for the supervision prayed for; the other is to impose such conditions as the Court shall consider "just" as qualifications upon that order. The Court are, in other words, empowered to provide for a liquidation under supervision, and also to protect the interests of individual creditors against the consequences of an unconditional order when they consider it "just" to afford such protection.

The reasons for which the order prayed for is asked are plain on the face of the petition. The resolution for a voluntary winding-up was passed by the shareholders on 5th March last, and on the 26th of that month this resolution was confirmed. The respondents, however, were not content with the realisation and distribution of the estate for the general benefit of the creditors in the liquidation. They, after 26th March, adopted separate proceedings for their own benefit, suing out decrees against the company, poinding company effects, and taking such steps as were necessary to carry through in terms of law the sale of the goods so poinded. This was a course practically destructive of the liquidation, for what the respondents could do might be done by other creditors, and therefore it was, as explained in the petition, to "obviate difficulties which have already arisen or might yet arise through the separate action of the creditors, whereby the estate of the company might be injured," that the petitioners were led to present the application which is now before the Court.

Such being the ground of this application, the question is, whether in the circumstances it is sufficient? There may in many cases be other reasons, and when there are, the ground on which such an order as that prayed for may be granted will of course be the stronger, but such as it is the reason presented to the Court appears to me fully to warrant the granting of the order prayed for. The allegation of the petitioners is that the goods poinded are almost, if not altogether, the whole assets of the company, and if this be true the alternative is between surrendering to the creditors who in opposition to the policy and the purpose of the liquidation have, after the liquidation was commenced, used diligence against the estate for their own ends, or to grant the order prayed for, which unless qualified by restraining conditions will, under section 163 of the statute, according to my reading of that enactment, render void the proceedings adopted by the respondents. But even should the petitioners be in error when they say that the goods already poinded are the whole, or at anyrate the bulk, of the assets, this does not really weaken the ground of their application, because if the protection of the estate against the diligence of individual creditors be not, when there is no other, a reason for which an order for liquidation under supervision should be granted, and the order in consequence be refused, the result will be that other creditors may follow the course taken by the respondents, and as a consequence there might be neither realisation nor distribution in the liquidation. If here, as in England, the resolution to wind up by a voluntary liquidation, when confirmed by the company, had been a ground on which the attachment of company assets by individual creditors could have been challenged, there would not have been the same need here as in existing circumstances there is for an order that the voluntary winding-up shall be carried on subject to the supervision of the Court. But the decision in the case of *Sdeuard* shows that here without such an order the company's estate cannot be protected against the action of individual creditors, and this appears to me to be reason sufficient for the granting of that order by the Court.

But though the order shall be granted, it does not follow that the individual creditors who have pursued separate measures may not have a first claim to the benefit of their diligence, and the respondents say that such is their claim on the present occasion. The next question therefore is, whether if the order prayed for is to be granted, the respondents notwithstanding are to be allowed to follow forth their diligence against the effects which they have poinded? The ground for which this privilege is claimed is that they raised an action against the company more than a month prior to the commencement of the voluntary winding-up, and executed diligence prior to the presenting of the present petition. The interval between the raising of the respondent's action and the confirmation of the resolution is not in my opinion a reason for which the Court should grant the privilege they are desirous to obtain, the truth probably being that the institution of

this action was the cause, or one of the causes, which forced the company into liquidation. Nor is their second circumstance—the use of diligence before the presentation of the petition—a ground on which what they claim can be conceded. It is true, no doubt, as the respondents say, that decrees for these debts were granted on the 18th April, that charges for payment were given on the 24th April, and that on the 2d May the poindings in question were executed, while the petition in which the order for supervision is asked was not presented till the 14th of May. But the Court was not sitting during any part of this period. The case of the respondents therefore is hardly stronger than it would have been if the order had been applied for the day after the decrees obtained by the respondents were pronounced, and that as a reason for giving the privilege claimed could never be sustained. If the diligence had been used before the voluntary liquidation commenced, the case would have been different. But in this case the liquidation was begun before the poinding, and as there was no avoidable delay in applying for the order for supervision now asked, what is urged is not a reason for granting the privilege claimed.

Every case of the kind is a case of circumstances, and there have been conflicting decisions in the English Courts; but the last and most authoritative—*Vron Colliery Company*, 20 Chan. Div. 442—is a direct authority against the respondents' contention.

Though not urged in the answers, it was suggested in the course of the argument at the bar that the respondents should be put in the same position as they would have occupied if the poinded goods had been sold on the 14th of May, which would have happened but for the sist of diligence granted in the Bill Chamber on the 12th. But I am not disposed to yield to this demand. In the first place, the interlocutor in the Bill Chamber cannot be reviewed on this application, and must be taken meantime to have been well pronounced. But, in the second place, the application for interdict was in my opinion reasonable in the circumstances—certainly there is nothing to show it was unreasonable. Its purpose was to preserve the *status quo* until by the meeting of the Court the statutory application could be presented, and as that was necessary to prevent the policy and purpose of the liquidation under supervision from being frustrated, the occasion was one on which the *nobile officium* was legitimately exercised by the Lord Ordinary in the Bill Chamber. Let it be borne in mind that the order for supervision is to be qualified, and consequently the diligence of individual creditors is, despite the liquidation, to be allowed only if the Court shall think this "just." Such is the provision in sec. 147 of the Companies Act of 1862, and I am of opinion that it would not be just to the company, and would be more than just to the respondents, were the order prayed for by the petitioners to be qualified by a permission given to the respondents to follow forth their diligence as they propose. My opinion is that the order for supervision prayed for should be granted. This would be enough for the end the petitioners have in view, according to my reading of the statute, but as both parties desire an express deliverance on the matter of the diligence begun by the respondents, and this may competently be given, decree in terms of the remainder of the prayer may be, and I think ought to be, pronounced.

Lord Young—I am of the same opinion.

Lord Rutherfurd Clark—In considering this application I am to assume that the decision in the case of *Sdeuard* v. *Gardner* was right, and therefore that we have no statutory power to stay proceedings at the instance of creditors. The creditors here have completed their security by poinding, and the funds were about to be realised by sale which was to take place on a date fixed. In the ordinary case nothing can be done to stop the diligence of creditors which they are in the course of carrying through. The petitioners, however, stopped the realisation of the funds of the company by the creditors by applying in the Bill Chamber for interdict, which they obtained. I have grave doubts of the propriety of granting that application, for I do not see any propriety in stopping creditors from realising the securities which they have obtained by their diligence. These are my doubts, and I confess that, while granting the first part of the prayer, I should be disposed to allow the creditors of the company to proceed with their diligence.

Lord Justice-Clerk—I concur entirely in the opinion of Lord Craighill, and in doing so I do not propose to indicate any opinion as to the effects of a voluntary winding-up in stopping the race of diligence of creditors. The English rule is apparently entirely the reverse of that laid down in the case of *Sdeuard*, and that would raise important considerations did the question arise here. In the present case, however, the matter is one entirely in our discretion, and I think the result of Lord Craighill's opinion is just and equitable.

The Court ordained "the voluntary winding-up of the company to continue subject to the supervision of the Court."

Counsel for Petitioners — Graham Murray. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondents—Ure. Agents—Dove & Lockhart, S.S.C.

Thursday, July 12.

SECOND DIVISION.

[Lord Kinnear.

SHARP *v.* PAROCHIAL BOARD OF LATHERON.

Valuation of Lands Act 1854 (17 *and* 18 *Vict. c.* 91), *secs.* 5 *and* 33—*Assessment—Erroneous Entry in Valuation Roll—Duplicate Entry in Valuation Roll—Poor Law Act* 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 40.

A change of tenancy having occurred in certain subjects assessed for poor-rates according to the valuation roll made up for the year 1880-1, the subjects were entered in the valuation roll for 1881-2 as occupied by the new tenants, the former entry being also continued in that valuation roll.