numerous class of cases relating to deposits in bank. I have little doubt, also, that it is sound in principle, as your Lordships are versed in this practice. My doubt is raised by the fact that the bank has had no conflicting claims made on it, and, indeed, the counsel for the reclaimers emphasised as a point in his favour that no claim on the bank was possible but one, viz., the claim of the holders of the deposit jointly. Now, I had thought that, whether made in one form or another, there must be conflicting claims on the holder of the fund, and that it would not do to support a multiplepoinding by showing that in the sequel, after the holder had paid, a dispute would arise. In other words, it had seemed to me that while the fund is the money, the competency of the multiplepoinding was to be determined, not by the identity of the fund, but by the hands in which the fund is at the time of the action. The other view would seem to ignore the difference between a debtor and a debtor's debtor, which I thought was essential in these questions. All this, however, is formal and technical, and I do not dissent from the judgment proposed.

The Court recalled the interlocutor reclaimed against, and remitted to the Lord Ordinary to proceed.

Counsel for the Real Raiser—D. F. Asher, Q.C.—Clyde. Agents—Menzies, Black, & Menzies, W.S.

Counsel for the Defenders—Shaw, Q.C.—Cullen. Agent—Marcus J. Brown, S.S.C.

Tuesday, November 30.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

FAIRBAIRN *v.* SHEPHERD'S TRUSTEES.

Domicile—Acquisition of Domicile—Public Servant—Double Residence.

S., whose domicile of origin was English, obtained an appointment in the General Post Office at Edinburgh early in life, and took up his residence there in 1845. He retired on a pension in 1878, and thereafter continued to reside in Scotland till his death in 1895. S. was owner of a small property in Westmoreland, which had been in his family for a long period. The greater part of this property he kept in his own hands, and spent his yearly holiday there while in the service of the Post Office. After his retirement from the Post Office his visits were more frequent, but he never made it his home, and allowed the house to be occupied by his relatives. He always regarded his Westmoreland connection and his property there with pride and affection.

In 1858 S. married a Scotswoman, and by the terms of his marriage-contract he assumed that the rights of his wife and children at his death would be regulated in accordance with Scotch law.

In 1863 a daughter, B, was born of the marriage. *Held* (*aff.* Lord Kyllachy) that at that date S. had lost his domicile of origin, and had acquired a domicile in Scotland, and that B's domicile of origin consequently was Scottish.

Observed (by the Lord President) as regards the acquisition of a a domicile different from that of origin, "that in the case of a public servant, just as in the case of professional men or traders, the nature, or the tenure, or the prospects of the occupation, form only an element of evidence stronger or weaker in the question of intention."

Domicile—Acquisition of Domicile—Proof.

B, whose domicile of origin was Scotch, survived her father, who died in 1895, for fourteen months, during which period she resided in England, where she had taken a house for three years. At the same time she entertained the idea of building a house in Edinburgh, and employed an architect to prepare plans. During the period of her survivance B was suffering from consumption, and was in a weak and nervous condition. Her views as to a choice of a home, as expressed to her relatives, were inconsistent and changeable.

Held (*aff.* Lord Kyllachy) that she had not lost her domicile of origin.

Expenses—Trust-Estate—Action by Legatees with Conflicting Interests—Expenses of Unsuccessful Party.

An action contested by two sets of legatees with conflicting interests for the purpose of ascertaining the validity of a testamentary trust-deed, was watched on behalf of the trustees administering the trust in question, and by the *curator ad litem* appointed to certain pupil children with a beneficial interest in the estate. No part, however, was taken by them in the conduct of the case. The unsuccessful parties moved for expenses out of the estate on the ground that it had been necessary to raise the question, and that the children, whose curator opposed the motion, had greatly benefited by the decision given.

The Court *refused* the motion.

Miss Jessie Shepherd, daughter of the late John Shepherd, sometime an official in the General Post Office, Edinburgh, died in Penrith on 17th May 1896. She left a trust-disposition and settlement, which was executed in Scotland in the Scottish form, by which she conveyed her whole estate to trustees. She directed her trustees, *inter alia*, to pay the following legacies:—"Five hundred pounds to RACHEL WILSON, Domestic Servant in my employment, for her devoted services to our family for a number of years, and to my dear friend and 'sister in deed if not in word,' JEANETTE

HELENA JENKINS (commonly called LENA), of Ten Brunstane Road, Joppa, and now taking care of my sister's children in Penrith, the sum of One thousand pounds unconditionally, and a second sum of One thousand pounds to be given to her twelve years from the date of these presents should she still have fulfilled a 'mother's part' to my dear little nephews and nieces, and looked after their welfare, and failing her to whoever has faithfully done so, of which my trustees shall be the sole judges, and to whom I hereby commit full power to give or withhold payment as to them may in the circumstances appear proper."

The income of the trust-estate was to be paid to her brother-in-law Richard Ballingall Neville, and the capital of the residue was to be divided among the children of her deceased sister.

There was also found in her repositories a holograph writing headed, "codicil to will," which was in the following terms:—

"I, JESSIE SHEPHERD, who in May hurriedly drew up a will at Edinburgh (for the benefit of those I believed to be my truest friends), reserving at the same time the right to cancel, alter, or add to any part of it, on more mature reflection, do this 24th day of June 1895, declare my latest wishes now to be the following undermentioned items, which I leave in the hands of my trustees to see properly executed:—

1st. To Rachel Wilson I leave £300 (three hundred) instead of the £500 before mentioned in my will.

2nd. To J. H. Jenkins (Lena) 'my sister in deed if not in word' *in the past*, the sum of 1000 shillings (not £1000), and 'a second 1000 shillings (not £1000) to be left to her,' &c., &c., 'or to any one else whom my trustees may think fit' 12 years hence.

3rd. To R. B. Neville, my dear sister's husband, I leave the life interest of my means & estate only so long as he does not marry again. Should he do so, my whole estate to remain out at compound interest for the children of my sister, until the sons marry (when they may have their shares) or until the death of the said R. B. Neville.

4th. To Eliza Fairbairn, my dear Cousin, I leave all my furniture & £500. Said furniture *not* to be put to auction. Should she not wish it, let it go to some of my dearest friends who do. 5th. To Ettie Buchan, my dear friend, I leave all my photographic views & also £500.

6th. Some personal momento to all my other friends as they may desire. To P. Flint my MSS. JESSIE SHEPHERD."

The validity of this document having been disputed, an action was raised by two of the beneficiaries thereunder, Miss Eliza Fairbairn and Miss Hester Caroline Buchan against the trustees acting under the trust-disposition and the beneficiaries named therein, craving the Court for declarator—"That the said Miss Jessie Shepherd died upon 17th May, 1896, domiciled in Scotland; and that the writing, holograph of the said Miss Jessie Shepherd, and purporting to have been made and executed by her upon the 24th day of June 1895, is a valid and effectual codicil to the said trust-disposition and settlement executed by her as aforesaid."

Answers were lodged by the defenders Miss Jenkins and Mr Richard Ballingall Neville. The trustees intimated their intention to watch the proceedings in the action, and the *curator ad litem* who was appointed to protect the interests of the pupil children of Mr Richard Ballingall Neville stated that it was to the interest of his wards to maintain the validity of the codicil, and that accordingly he adopted the pleas and averments of the pursuers.

The pursuers averred that the domicile of origin of the testatrix was in Scotland, and that she died without ever having lost such domicile.

The defender pleaded—(1) The said testatrix having been a domiciled Englishwoman from her birth, or at any rate having been domiciled in England at the date of her death, her estate falls to be distributed according to the law of that country.

The Lord Ordinary (KYLLACHY) allowed a proof.

The following facts appeared from the admissions of the parties on record, and as a result of the proof:—

Mr John Shepherd was an Englishman by birth, having been born in Westmoreland of English parents. In 1845 he removed from Westmoreland to Edinburgh, having received an appointment to a clerkship in the General Post Office, Edinburgh. At that time appointments in the General Post Office were to individual offices, and there was no transference from place to place except in special circumstances. It was accordingly of the nature of a permanent appointment. He was not in the service of the Government prior to this appointment. In 1858 he married Miss Janet Black Gloag, a daughter of Dr James Gloag, a teacher in the Edinburgh Academy, with whom he entered into an antenuptial contract of marriage in Scotch form. The contract contained the usual clauses as to the provisions in favour of the wife and children being in satisfaction of their claims to terce and *jus relictæ* and to legitim respectively.

After Mr Shepherd's marriage he resided in Portobello till his death, which occurred in 1895. His wife died in 1873. There were seven children of the marriage, all of whom, with the exception of two who died in infancy, were brought up and educated in Edinburgh or the vicinity. Only two of his family survived Mr Shepherd, Mrs Neville, who died within a few weeks of his death, and Miss Jessie Shepherd. Mr and Mrs Shepherd, and all their family who predeceased them, were buried in Warriston Cemetery, Edinburgh. For seventeen years prior to his death Mr Shepherd had retired from service in the Post Office upon a pension, and during the whole of this period he lived at No. 20 Brighton Place, Portobello, which he had purchased in 1876. He was also the proprietor of Murton, a small estate of 100 acres, in Westmoreland, which had been in the possession of his family for many years. There

was a house on the estate, the use of which Mr Shepherd allowed to his unmarried sisters, but he was in the habit of spending his holidays there every year so long as he remained in the Post Office, and after his retirement he paid two or three visits there every year. He retained in his own hands until his death the cultivation of part of the estate.

With regard to the expressions used by Mr Shepherd from time to time, as bearing on the question whether he had the *animus manendi* in Scotland there was a considerable conflict of evidence. On the one hand, it was proved that he had a great affection for Murton, that he was very proud of his position as a landowner in England, and of the yeoman family from which he was descended. Evidence was given by Westmoreland friends to the effect that Mr Shepherd always regarded himself as an Englishman, that he spoke of Murton as his home, and expressed his intention of returning and of settling permanently there. On the other hand, witnesses spoke as to his liking for Portobello, and to expressions used by him to the effect that while he was fond of Murton, he never intended to return there for good. It was proved that Mrs Shepherd did not agree with her husband's sisters, and she inserted in her will a clause expressive of her desire that her children should not go to Murton.

With regard to Miss Jessie Shepherd the facts were as follows:—She was born in Edinburgh on 25th January 1863, and resided with her father in Portobello for several years after attaining majority. Being, however, in delicate health she was accustomed during the last few years of her life to spend a portion of each year abroad or in health resorts in various parts of Scotland and England. In the autumn of 1892 she went to the Canary Islands, where she resided until the death of her father in March 1895, when she returned to England. On her return from abroad in May, Miss Shepherd came to Penrith and resided in lodgings for a few weeks, and in July she took a three years' lease of a house there. This period was longer than the one for which she originally wished to take the house, the longer term being the result of a compromise by which the landlord agreed to do certain repairs.

Mrs Neville, the last surviving sister of Miss Shepherd, had died a few weeks previously, and her children, to whom Miss Shepherd was greatly attached, were living with their father at Penrith under the charge of the defender Miss Jenkins. Miss Shepherd was at this time in an advanced stage of consumption, and Mr Neville was unwilling that his children should be too much with her, a circumstance which distressed her very much, and caused a temporary coolness between her and Miss Jenkins, who had been her great friend. Miss Shepherd furnished her house partly with furniture taken from her father's house in Portobello, having sold that house, and part of the furniture in it. In February 1896 she also took a lease of a garden nearly adjoining her house. Shortly afterwards she came up to Edinburgh and spent seven weeks there, during which time she was largely occupied in examining different sites for a house which she proposed building on the south side of the city, and she employed an architect to prepare plans for it. Shortly after her return to Penrith she died very suddenly on the 17th May. With regard to Miss Shepherd's intentions as to her residence for the rest of her life, there was again a conflict of evidence, her friends giving various accounts as to her having expressed her intention to live in Penrith and in Edinburgh. She was in a very delicate state of health, and the result of the evidence was to show that she had no fixed plans, but was constantly changing her mind.

The Lord Ordinary (KYLLACHY) on 30th April pronounced the following interlocutor:—"Finds that the deceased Miss Jessie Shepherd was at the time of her death in May 1896, and also at the date of her codicil of 24th June 1895, a domiciled Scotswoman: With this finding appoints the cause to be enrolled for further procedure, and grants leave to reclaim."

Opinion.—"I have found this case to be attended with some difficulty, and on one point I may say that my opinion has wavered. But in result I have come to the conclusion that Miss Shepherd's domicile of origin was in Scotland, and that she had not at the time of her death acquired a domicile of choice in England.

"I cannot say that I have much doubt as to Miss Shepherd's domicile of origin. She was born in Portobello, and resided there—except while abroad for her health—until shortly before her death. Her mother was a Scotch lady, and her father was an official in the Edinburgh Post Office. I apprehend, however, that her domicile of origin depends upon her father's domicile at the time of her birth, and although there is a good deal of evidence on that subject, it appears to me that, stated shortly, the matter stands thus:—The late Mr John Shepherd was by birth an Englishman, and inherited and possessed a small estate in Westmoreland. In 1844, when quite a young man, he entered the service of the Edinburgh Post Office, and took up his residence in Portobello, where he married and his children were born. He resided there until his death in 1895, paying only occasional visits to his English property, and he continued this residence in Portobello notwithstanding that in 1878 he retired from the Postal Service and was free to reside where he chose. These facts are, in my opinion, conclusive as to his having adopted Scotland as a domicile of choice. There is some evidence to the effect that he, latterly at least, had some idea of returning to Westmoreland. But there is about as much evidence the other way. And in any case it appears to me that having once settled in Scotland with the intention of living there indefinitely, he became thereby a domiciled Scotsman, and had done nothing at the date of his death to change the Scotch domicile so acquired.

"The question, therefore, is, whether

Miss Shepherd lost her Scotch domicile of origin and acquired an English domicile of choice before her death, which took place in May 1896. Now, she certainly did not do so during her father's life. She was a good deal abroad, but she was unmarried, and she remained a member of her father's family until his death, which, as I have said, occurred only a year before her own. The point for decision is therefore narrowed to this—whether in the year which elapsed between her father's death and her own, she is proved to have adopted England *animo et facto* as her permanent home.

"It is here that I think, if anywhere, that the evidence presents some difficulty. It is unquestionable that, on her return from Teneriffe after her father's death, Miss Shepherd broke up the establishment at Portobello, sold the house and furniture, and took a three years' lease of a small house at Penrith, which she furnished, and of which she took possession in July 1895. It is also the fact that, apart from certain visits to Edinburgh, mainly on business, she continued to reside in Penrith down to the time of her death. Moreover, she had certain ties to that district, arising from her interest in her father's Westmoreland property, and from the residence in Penrith of her brother-in-law and nephews and nieces, who were her nearest relatives. In these circumstances it is forcibly argued that the *prima facie* inference from her action is and must be that she had settled in Penrith *animo remanendi.* And it must be acknowledged that if there were no evidence of the young lady's views and intentions beyond what may be gathered from her proceedings in the summer of 1895 it would be difficult to resist the suggested inference. But, on the other hand, it has to be kept in view that a domicile of origin is not easily lost. The *onus* is always on those who seek to displace it, and to satisfy that *onus* the change must be a change, as it is expressed, both *animo et facto.* It is not, therefore, conclusive that Miss Shepherd should have taken a three years' lease of the house in question, or even that she had settled in that house with the intention of remaining during the period of the lease. It may be that being entirely free, and being, as she was, of a somewhat unsettled disposition, she took up house in Penrith only as an experiment, and had not prior to her death got beyond the stage of being resolved to give the place a trial—looking about in the meantime in Edinburgh and elsewhere for a residence which might suit better her delicate health and social requirements. That is the point for decision, and on a review of the whole evidence it does appear to me that such is, on the whole, the preferable and just conclusion.

"It is true, as I have observed, that the lease of Alma House was for three years. But there is evidence that Miss Shepherd would have preferred, if possible, to have had it from year to year, and there is certainly evidence that within a few months of taking possession she was discussing the prospect of buying or building a house in the Morningside district of Edinburgh. It is, moreover, not in dispute that in the spring of 1896 she spent seven weeks in Edinburgh, during which she was largely occupied in examining different sites for a proposed house in the south side of the city. In point of fact she employed an architect and had plans prepared, and some at least of her friends were and are satisfied that if she had not died, as she did somewhat suddenly soon after her return to Penrith, she would have shortly returned to Edinburgh and made it her home. I do not, of course, say that if it were once established that she had taken up house in Penrith, not tentatively, but with the resolve to settle there permanently, or at least indefinitely, the fluctuations of purpose to which I have referred would have been of much importance. But the question being *quo animo* is the Penrith establishment set up, it does seem to me legitimate—and indeed essential—to accept all light which can be derived from the acts of the deceased and the expression of her views and sentiments during the whole period down to her death. As I have said, this part of the case is not free from difficulty, but on the whole I have reached the result which I have expressed, and shall therefore, as desired by the parties, pronounce a finding as to Miss Shepherd's domicile, which will be to the effect that her domicile of origin is Scotch, and that there is no sufficient evidence that she acquired an English domicile before her death."

The defenders Richard Neville and Miss Jenkins reclaimed, and argued — 1. *John Shepherd.* The *onus* of showing that he had changed his domicile lay on the reclaimers—*Steel* v. *Steel,* July 13, 1888, 15 R. 896 at 908; *Aikman* v. *Aikman,* 1861, 3 Macq. 854; 1859, 21 D. 757. At any rate, Mr Shepherd had not acquired a Scotch domicile in 1863. The cases cited by the respondents on Anglo-Indian domicile were no longer good law, having been set aside by more recent decisions. Accordingly, the contention of the respondents that the acceptance of a Government appointment in Scotland *ipso facto* inferred a change of domicile could not be supported — *ex parte Cunningham,* 1884, L.R., 13 Q.B.D. 418 at 425; *Udny* v. *Udny,* June 3, 1869, 7 Macph. (H. of L.) 98; *Steel* v. *Steel, supra, Munro* v. *Munro,* August 10, 1840, 1 Robinson App. 492. The case of *Forbes* v. *Forbes,* February 9, 1854, 23 L.J., Ch. 724, was bad law from beginning to end, the judgment ignoring the fact that the domicile of origin reverted on the loss of an acquired domicile. In *Clark* v. *Newmarsh,* February 13, 1836, 14 S. 488, there were elements which rendered it unnecessary to found upon the nature of the employment. In *Commissioners of Inland Revenue* v. *Gordon's Executors,* February 4, 1850, 12 D. 657, the fact that there was no estate in Scotland belonging to the person whose domicile was in question weighed strongly with the Court. Accordingly, the fact that Mr Shepherd before his retirement was obliged by his employment to reside in Scotland, so far from inferring a change of

domicile, supported the reclaimers' view as showing that his residence was not of choice but of necessity. As soon as he was free his visits to Murton became longer and more important, and it was clear that had it not been for the health of his daughters he would have gone to reside there permanently. But if such return had been prevented by the state of his own health it would not have affected his domicile, and the same argument would apply when it was the health of his family. Accordingly, while the period after 1878 might be used to a certain extent to interpret his intentions before 1863, it did not warrant the inference that he never intended to return. Only "relative and proper" weight was to be given to the actings of the later period to interpret the intentions of the former—*In re Grove*, 1887, L.R. 40 Ch. Div. 216. With regard to the argument founded by the respondents on the marriage-contract, it should be remembered that it was drawn up by a Scotch agent who would as a matter of course insert the clauses as to *legitim*, &c. The fact that the wife and children were excluded from rights which they might have, did not amount to an assertion that Mr Shepherd considered himself a Scotchman, and that his wife and children naturally had such rights—*Keith's Trustees* v. *Keith*, July 17, 1857, 19 D. 1040. The case of *Doucet* v. *Geoghegan*, 1878, L.R., 9 Ch. Div. 441, was one concerned with a will where the fact that the provisions would have no effect if the testator were French showed that he considered himself English. 2. *Miss Shepherd.* If the reclaimers were right in their contention that Mr Shepherd had not acquired a Scotch domicile in 1863, even if he acquired one after his retirement, then Miss Shepherd, having been born English, the task of showing that she had reverted to her original domicile was not a difficult one. The history of her actings after her father's death furnished ample evidence to prove this, and even if it was held that she had been born Scotch, her actings proved that she had deliberately made up her mind to reside permanently in England, and had acquired an English domicile. Her prolonged residence abroad, the sale of the house in Scotland, and leasing of a house in England, were all elements supporting this view.

Argued for respondents—1. Mr Shepherd was in 1863 a domiciled Scotchman. It was true that there was a certain *onus* to discharge in order to prove abandonment of domicile of origin, but such as it was they had fully discharged it. The *dicta* of the Lord President in *Steel* v. *Steel* were quite sound as applying to Rangoon, but did not apply to an Englishman becoming a Scotchman and *vice versa*. The *dicta* of Lord Cranworth on the doctrine "*exuere patriam*" quoted there were discredited in *Udny* v. *Udny*, *supra*, at p. 96 and 100; *Haldane* v. *Eckford*, 1869, L.R. 8, Eq. 631 at 640; *Daucet* v. *Geoghegan*, *supra*, at p. 457; *Brunel* v. *Brunel*, 1871, L.R. 12, Eq. 298 at 301. This was not a case of changing nationality, and as was pointed out by Lord Adam in *Vincent* v. *Earl of Buchan*, March 19, 1889, 16 R. 637 at 645, the considerations applying to a foreigner were not the same. The facts in Mr Shepherd's life which bore out the respondent's contention were (1) his acceptance of an appointment in the post office, (2) his marriage with a Scotch lady, and (3) his actings after his retirement. The fact that he had accepted a Government appointment which he knew to be of a permanent character was in itself enough to effect a change of domicile. This was established by a series of cases commencing with those of Anglo-Indian domicile—*Clarke* v. *Newmarsh*, *supra*, *Gordon's Executors*, *supra*, *Bruce* v. *Bruce*, April 15, 1790, 3 Pat. 163; *Wauchope* v. *Wauchope*, June 23, 1877, 4 R. 945; *Forbes* v. *Forbes*, *supra*, Jarman on Wills, i. 15. Burge's Commentaries, i. 47. The *dictum* of Lord Westbury in the case of *Udny* v. *Udny*, *supra*, at p. 99, applied to the case of a consulate, and was not intended to reverse the whole series of decisions. A consul was a *quasi* ambassador, and it was natural that he should not lose his domicile of origin by accepting that office any more than a soldier on military service. In any case, apart from the authority of the Anglo-Indian cases, the acceptance of an office such as this, taken along with other circumstances, was strong evidence in support of a change of domicile. 2. The marriage-contract in Scotch form was another important piece of evidence as corroborating the first—*Forbes* v. *Forbes*, *supra*, *Lashley* v. *Hog*, 1804, 4 Pat. 581; *Doucet* v. *Geoghegan*, *supra*. 3. It was quite legitimate to argue from Mr Shepherd's actings after his retirement that he had always intended to make Scotland his home—*In re Grove*, *supra*. The purchase of a house in Portobello was an element of importance. It could not be said that this was a case of double residence, for while Mr Shepherd was undoubtedly attached to Murton, he never really lived there after coming to Scotland, or made it his "home" in any sense of the word. But even if he had not changed his domicile in 1863, there could be no question that he did so on his retirement when he continued to live in Portobello, the best evidence of his *animus* being this *factum*, whatever expressions of intention he may have uttered —*Haldane* v. *Eckford*, 1869, L.R., 8 Eq. 631; *Brunel* v. *Brunel*, *supra*; *In re Steer*, 1858, 3 H. & N. 594. Accordingly Miss Shepherd had undoubtedly acquired a Scotch domicile, even if it were held that she was not born Scotch. Taking the former as the worst view for the respondents, the evidence as to her intentions was of such a conflicting nature as to show that she really had no fixed ideas upon the subject of her future home. There was not enough in her actings to imply an abandonment of domicile even if it were but an acquired one, and the argument applied *a fortiori* if it were held to be her domicile of origin.

At advising—

LORD PRESIDENT—For determining the question before us it is necessary, first, to

ascertain what was the domicile of John Shepherd at the date of his daughter's birth in 1863. I have come to a definite conclusion on this issue, but I have found it to require careful consideration.

The broader facts of Mr Shepherd's life are these—His domicile of origin was English. Born an Englishman, he early in life came to Edinburgh, in 1845, having got an appointment in the Post Office, and he remained in that service for thirty-three years, retiring voluntarily on a pension in 1878. A few years before his retirement he had gone to reside at Portobello, and in 1876 he bought the house which he was occupying; there he resided after his retirement, and there he died in 1895. He had married a Scotchwoman thirteen years after he entered the public service in 1858, and he and his wife and children lived together, first at Edinburgh, and then latterly at Portobello. Each year Mr Shepherd spent a few weeks at his native place in Westmoreland; but while those interludes have their own significance in the question of *animus manendi*, they do not, in my judgment, present what is sometimes called a question of double residence, or abate the fact that from 1845 to his death in 1895 Mr Shepherd's residence was in Scotland. The more delicate question is, whether the true inference from the evidence is that Mr Shepherd "had determined to make, and had made, Scotland his home, with the intention of establishing himself and his family there, and ending his days in that country."—(Lord Chancellor Cairns in *Bell* v. *Kennedy*, 6 M. (H. of L.) 69). While the general facts, as I have stated them, must be allowed to point to *animus manendi*, the defenders are able to indicate a set of considerations looking in the opposite direction which are well worthy of consideration.

Mr Shepherd had not merely in law an English domicile, but he was an Englishman born and bred; he came of a yeoman family, long-settled and deeply-rooted in Westmoreland, and he inherited from his father an estate in Westmoreland worth £100 a-year. Personally Mr Shepherd was strongly attached to his own kin and country. Proud of his position as a Westmoreland statesman, he kept most of his land in his own hands with his nephew as manager, and although he allowed the house to be occupied by his unmarried sisters, this was by his leave, and the house was open to him when he chose to go there. So long as he was in the Post Office he seems to have spent his holidays at Murton, and after he retired he went two or three times a-year. He was fond of shooting, and enjoyed the society of his old friends, among whom he was very popular. In their judgment he retained the personal tastes and ways of thinking which are distinctive of an Englishman.

Now, to my thinking, every word of this is highly relevant to the question before us, but then it is necessary to remember how it is relevant, and that is only as making it less likely that Mr Shepherd should resolve to stay all his life in Scotland, and more likely that he, all the time of his residence in Scotland, intended to return to England. If, in spite of this evidence, it is shown that he did so resolve to stay in Scotland, then the mere fact that he preferred England to Scotland, and English society and customs to Scotch society and customs, cannot preserve his English domicile, or take away the legal result of an intention permanently to reside in Scotland coupled with the fact of such residence.

We have, then, first to consider the period from 1845, when Mr Shepherd came to Scotland, to 1878, when he retired from the service of the Post Office. For obvious reasons, which I shall presently discuss more fully, the period subsequent to 1878 has, as matter of evidence, a very strong bearing on the earlier period, but it is with the earlier period that we have directly to do.

Now, on the fact that during those thirty-three years Mr Shepherd was in the service of a public department, the parties have founded conflicting arguments. For the party maintaining the Scotch domicile it has been argued that the fact of accepting a permanent appointment, the duties of which require residence at a particular place, demonstrate an election of domicile in that country. On the opposite side, it has been contended that change of domicile cannot be effected by residence on the part of an official whose duties constrain him to residence in the place where they are performed. Both contentions must, I think, be rejected.

So long as it is steadily kept in mind that the ruling consideration is intention, it is clear that the motive which leads to the intention is of itself unimportant. If therefore, the service were one (and I put it merely for illustration) in which there were no retiring allowances, and the man in question had no private means, then, in absence of rebutting evidence, the legitimate inference might be that he intended from the first to stay all his days. But take a different case, suppose a civil servant, an Englishman, with all his connections English, to receive in middle life or past it, promotion to a post at Edinburgh, from which there is compulsory retirement with a pension at sixty-five, I should say on these facts that the probability is that he would go back to England when his time was out, and would all along look forward to doing so; and for that reason I should conclude that he intended doing so. In that state of facts there is no law which compels me, merely because the man is a public officer, to hold, contrary to the natural effect of the evidence, that he intended to stay in Scotland. The sound view is that in the case of public servants, just as in the case of professional men or traders, the nature or the tenure or the prospects of the occupation form only an element of evidence stronger or weaker in the question of intention.

Again, and in like manner, if the conditions of a public employment or of a private employment lead a man to resolve permanently to settle in the country where he

holds his appointment, it is not the reason of his decision, but his decision that determines his domicile. To say that he dislikes his fate and would prefer to live elsewhere is nothing to the purpose. A man's decision about his own career is in many cases opposite to his preference, but it is his decision and not his preference that governs his domicile. Now, in many cases of public employment the conditions of service make it in the highest degree probable that a man's accepting the service implies that his decision must be to stay. But, on the other hand, the circumstances of the individual might rebut the presumption arising from the nature of the post. Suppose General Trapand, instead of contentedly taking up the part of a Scotch country gentleman, had been heir (with indefeasible right of succession) to a man of ninety, and had only accepted the Governorship of Fort Augustus as a temporary shift, with the fixed intention of then going back to England, then *Clark* v. *Newmarsh* would never have stood on the books as a shelter for the erroneous doctrine (which it does not lay down) that the acceptance of a Government appointment of that class necessarily involves the acquisition of a new domicile.

Holding the mind free, then, to weigh the particular circumstances of the present case, I proceed to consider whether it is established that by 1863 John Shepherd had settled in Scotland as his permanent abode. Now, ready as I should have been to conjecture that he merely awaited his release from office to go back to Westmoreland, I find it extremely difficult to adopt that conclusion when we learn that so soon as he was set free by his retirement in 1878 he did not go back, but, on the contrary, stayed on. Of course, this is not conclusive about 1863, because there might have been a change of mind during the later years of his service in the Post Office. But in the evidence there is nothing to show a change of mind between 1863 and 1878, or such a change of circumstances as might naturally presume a change of mind. And in the absence of such evidence, it is reasonable to infer that his mind in 1863 was the same as in 1878.

But the case for the *animus manendi* in 1863 does not rest solely on these inferences from subsequent events. In 1858 Mr Shepherd married a Scotswoman, whose father lived in Edinburgh. The importance of this marriage lies, not merely in it of itself forming a tie to Scotland, for this might not go far, but in the circumstances that it turned out to present a very formidable difficulty in the way of Mr Shepherd transferring his wife and children to Murton, even if he personally liked to do so. For some reason which we do not know (and it does not matter what it was) Mrs Shepherd and her father had a vehement dislike of her husband's sisters, and the lady went so far as in her will to protest in the strongest terms against the idea of the children ever going to Murton. Here, again, we do not know when this antipathy began, but it may safely be inferred that five years' acquaintance was more than enough to develop it. Accordingly, I am afraid that by 1863 Mr Shepherd, if he thought of it at all, must have seen that a quiet family life was not to be had at Murton.

Connected with his marriage, but standing out from it with an importance of its own, we have Mr Shepherd's marriage-contract. In it he makes certain provisions for his wife and the children of the marriage, and those provisions are declared to be in full satisfaction of terce and half or third of moveables, and in full satisfaction to the children of all claims of legitim or executry competent by or through the decease of their father. Now, it is true that these are words of exclusion, but the implication is that the children would, but for contract, have a right to legitim, and they would only have it if their father died a domiciled Scotchman, while no reference is made to their rights under English law. It was said for the defenders, indeed, that this is just the ordinary clause put in marriage-contracts by Scotch conveyancers as a matter of course. But then I am afraid that in the absence of affirmative evidence in a contrary sense, we must take it that Mr Shepherd considered what his children would have if he made no conventional settlement on them before he proceeded to execute the contract, and that his view was that they would have the rights of the children of a Scotsman and not of the children of an Englishman. Accordingly, I account the marriage-contract as a point of the highest importance in the evidence, which goes to show that before 1863 Mr Shepherd had settled in Scotland *animo et facto*; and, by the series of facts to which I have now referred, I consider the pursuers to have discharged the *onus* incumbent on them. The defenders, be it observed, are unable to point to any evidence, specifically relating to the period at and prior to 1863, which supports their case. They have, of course, applicable to this period, their general evidence about his visits to Murton and his attachment to that country, the value of which I do not underrate; but I have already explained the place in the argument which I assign to that branch of the evidence. It is true, also, that they have, from at least one witness, evidence that Mr Shepherd spoke of taking a house in the neighbourhood of Murton. But this evidence applies to a very late period in his life; and of the later or Portobello period of his life I have only to say that, in my judgment, the evidence that he intended permanently to stay in Scotland distinctly preponderates over the evidence to the contrary; and this preponderance exists if regard be had to what Mr Shepherd said, but still more decisively if regard be had to what he did and did not do. In truth, while I regard the question about the domicile of Mr Shepherd in 1863 as nice and requiring attention, the question about his domicile in 1895 admits of decision on the broadest and most obvious grounds. The true conclusion about this gentleman's life seems to be that from beginning to end an attached and loyal West-

moreland man, he settled in Scotland, and contented his love of his own country by keeping his English estate in his own hand, by visiting it, and by retaining an attachment to Murton and Westmoreland, which was perhaps even fed by absence.

I pass now to consider whether, assuming that Mr Shepherd's daughter Jessie, with whose testamentary settlements this action is concerned, had a Scotch domicile of origin, she *animo et facto* acquired an English domicile. The set of facts to be examined presents a singular and in some respects pathetic contrast to those which concern the domicile of her father. The period to be considered is only fourteen months, for it is not suggested that before her father's death she did anything towards electing an independent abode, and she survived her father only that short time. This is but a brief space within which to acquire a new domicile, even so far as regards residence *de facto* is concerned, although, in accordance with the well-settled principles which animate this opinion, it is superfluous to say that a residence in a new country for a much shorter time might be so charged with *animus manendi* as to suffice for the acquisition of a new domicile. But when we realise the broad facts in this period of the life of Miss Jessie Shepherd, I find it impossible to ascribe her sojourn at Penrith to anything which can be appropriately described in a question of domicile as *animus manendi*. All the fourteen months in question she was in the later stages of a fatal consumption, which had already carried off her only brother and every one of her three sisters. It should appear that, with the happy credulity which is characteristic of the disease, she did not realise her fate. But her strength was undermined, and she was correspondingly unstable of purpose. "I am in half-a-dozen minds," she herself writes to her brother-in-law. "She was," says this same brother-in-law, when examined as a witness in this cause, "a person of varying moods and humours." "She would say she was going to do something one day, and the next day change her mind. She was in the way of telling one person one thing, and another person another." A fickleness of this kind invalidates not merely what the lady said but what she did, as warranting the ordinary inferences of intention. It is quite true that she took a three years' lease of a house at Penrith, and that her ordinary residence was in this house during the fourteen months in question. But she took the house for three years only because she could not get it for a shorter time. She had not been at Penrith six months before she was employing an architect to plan a house at Edinburgh for her residence, and there is as much evidence of her intention permanently to reside at Edinburgh as there is of her intention permanently to reside at Penrith. The conclusion which I draw from the whole is that she had no formed intention at all. An intention to settle in a country other than the domicile of origin must, as I take it, have a fibre stronger than the changing fancies of an invalid. There are other circumstances, such as those relating to the advice which this lady got and acted on about her will, which in a narrower case might be of a certain importance, but I prefer to go on broader grounds. I consider the evidence entirely inadequate to establish that Miss Shepherd acquired an English domicile.

I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD ADAM—The question in this case is, whether the late Miss Shepherd at the time of her death was domiciled in Scotland.

In order, however, to the determination of this question, certain other questions require to be determined, viz., whether at the date of her father's death in March 1895 she was domiciled in Scotland, and, if so, whether that domicile was a domicile of origin or of choice, and, in either case, whether she had lost that domicile and acquired a domicile in England at the date of her death.

Then again, as Miss Shepherd during her father's life was never forisfamiliated, but lived in family with him, his domicile, whatever that might be, became hers, so that, in order to ascertain what her domicile was at any particular date, it is necessary to ascertain what his was.

The first question, therefore, which we have to consider is whether Mr Shepherd at the time of his death was domiciled in Scotland, and, if so, whether he had acquired that domicile at or prior to Miss Shepherd's birth or only subsequently. In the former case her domicile at her father's death would be a domicile of origin, in the latter a domicile of choice.

With regard to Mr Shepherd's domicile, my opinion is that he was domiciled in Scotland at the date of his death, and that he had acquired that domicile not later than his marriage with Miss Shepherd's mother in 1858.

The leading facts are that Mr Shepherd in 1844 or 1845, when quite a young man, received an appointment as clerk in the Edinburgh Post Office.

The duties of his office of course required that he should reside in or near Edinburgh. He accordingly came there, and continued to reside there until his death in 1895.

In 1858 he married Miss Gloag, a Scottish lady, and resided with her in Portobello, where Miss Shepherd and his other children were born, until his wife's death in 1873.

In 1876 he purchased the house in Portobello in which he had previously been living.

In 1878 he retired from the Post Office, but continued to reside in Portobello as before. He died there and was buried in the Warriston Cemetery.

During this long period, extending over 50 years, he had no residence or home in England, or anywhere else, so that in this case there is no question of a choice between two homes.

I think the inference from these facts is that at the time of his death Mr Shepherd

had settled in Scotland for life, and was living there *animo remanendi.*

But it is said that England was Mr Shepherd's domicile of origin, that there is evidence that he always intended to return there, and that that is sufficient to maintain his domicile of origin.

I do not think it necessary to determine whether an intention to return at some entirely indefinite period, which is the intention founded on here, would be sufficient to prevent the loss of a domicile of origin, because I think no such intention is proved.

Mr Shepherd had succeeded to a small family property in Westmoreland, from which he had originally come, and used to visit it annually, and there is some evidence that he occasionally expressed himself as desirous of returning there.

I agree, however, with the Lord Ordinary, that, so far as he expressed any intention on the subject, he as frequently expressed his intention to remain permanently in Scotland as he expressed a wish to return to England. But what, I think, is conclusive on the matter is, that after he retired from the Post Office in 1878, and was quite free to return to England as far as official duties were concerned, he took no steps whatever in that direction, but continued to live in Scotland just as before.

Assuming, then, that I am right in thinking that Mr Shepherd at the time of his death was living in Scotland *animo remanendi*, the next question is as to the time at which it may reasonably be inferred he had formed that intention or resolution. I think it may reasonably be inferred that he had done so not later than the time of his marriage, when he settled with his wife at Portobello. The whole future current of his life is consistent with that view. But there is also the material evidence furnished by the marriage-contract.

I see no reason to doubt that Mr Shepherd fully understood the nature and effect of that deed. By it the wife contracts on the footing that she is and will continue to be a domiciled Scotchwoman, and the children are contracted for on the footing that when they come into existence they would have rights which they could only have if domiciled in Scotland, and which the law of Scotland gives to the children of parents domiciled there. Thus certain provisions are settled on the wife, and are accepted by her in satisfaction of all terce of heritage—half or third of moveables or other claims competent to her; and certain provisions are settled on the children which are declared to be in full of all claims of *legitim* or executry competent to them. But the wife and children could only have these claims if Mr Shepherd was at the time domiciled in Scotland.

I think, therefore, that it is proved that Mr Shepherd was at the date of his marriage domiciled in Scotland, and that consequently Miss Shepherd's domicile of origin was Scotch.

But the question remains whether she ever abandoned the domicile which she had at her father's death.

If her domicile was a domicile of choice, it would appear to be sufficient for the defenders to prove that she had abandoned it, without proving that she had acquired another, because her domicile of origin would then revive, which in that case would be English. But if her domicile was, as I think, a domicile of origin, it would be necessary for them to prove not only that she had abandoned it, but that she had acquired, *facto et animo*, a domicile in England.

I do not propose to go into the evidence on this part of the case, but my opinion is that Miss Shepherd never abandoned her Scotch domicile. She seems to have been of a very vacillating disposition, and during the short remainder of her life, after her father's death—not much more than a year—I think that she never made up her mind or came to any settled resolution as to where she would spend her future life. It is probable, I think, that had she lived she would have settled in Scotland.

I am, accordingly, of opinion that the Lord Ordinary's interlocutor should be affirmed.

LORD M'LAREN — The first question in this, as in most cases of domicile, is the determination of the domicile of origin of the testatrix Miss Shepherd. This, of course, depends on the domicile of her father at the date of her birth, 1863.

Mr John Shepherd, the father, was born in Westmoreland, where he inherited a small property, and in 1845 he came to Scotland in consequence of having been appointed to a clerkship in the General Post Office, Edinburgh.

One of the questions discussed in the argument addressed to us was, whether the acceptance of a post in what is termed the permanent civil service is sufficient to determine a domicile of choice on the part of the civil servant. This, I may observe, is not a practical question, because it can hardly ever happen that in considering the domicile of a member of the public service we are limited to the one element of service in a part of the Empire which is not the domicile of origin. According to the best opinion I can form, I should not be disposed to hold that the domicile of origin is immediately displaced by the mere fact of acceptance of office in the civil service in a different part of the Empire. Without dwelling on the cases of service in the army or navy on the one hand, and in the Diplomatic or Consular services on the other, which in each case depend on specialities affecting the particular service, I may refer as the nearest illustration to judicial service, of which there are examples in the reported decisions.

In one of the latest cases of this class it was held that an English barrister who was appointed Chief-Justice of Ceylon, and who died there after a considerable period of service, had not lost his English domicile. But again, in *re Gordon*, a case in the Scottish Court of Exchequer, 12 D. 657, a Scotsman was held to have acquired a domicile in one of the West India Islands

by service there, first as a stipendiary magistrate, and afterwards as a member of the Legislative Council combined with residence in the island for six or seven years. It is true that the question in these cases related to the liability of the estate to death duties, but the incidence of the duty depended on domicile, and the cases are therefore relevant to the present inquiry. I should infer from these decisions and the cognate case of *Clark* v. *Newmarsh*, 14 S. 488, that the fact of residence determined by the duties of permanent office is a very important element in the proof of domicile, but it would not be consistent with principle to hold that a residence determined by the duties of office is in itself sufficient, because the question of the *animus manendi* is a question of fact in which all the elements of the man's life-history must be considered.

In the present case there is, I think, a concurrence of all the usual elements that constitute a domicile of choice. (1) Mr Shepherd remained in the service of the Post Office until he reached the age-limit, and never, so far as we know, contemplated residence in England. (2) He married an Edinburgh lady, and in his contract of marriage he was careful to exclude *legitim* and *jus relictae*, which are rights that would not exist if he had retained his English domicile. (3) He purchased a house at Portobello suited to his income and position in life, and resided in it during the remaining part of his life. (4) Neither the decease of his wife, his own retirement from the Post Office, nor the delicate state of health of his daughters, led to any change of intention on the part of Mr Shepherd. So far as we can discover from his acts, he accepted the position of being permanently resident in Scotland in the house which he had made his home.

I am unable to hold that the inference of *animus manendi* deducible from these facts is displaced by the single circumstance that Mr Shepherd made annual visits to Murton for relaxation or sport. I do not overlook the importance of the element of land-ownership in the country of origin. Where a substantial income is derived from a family estate, its locus may well be regarded as the seat of the fortunes of its owner, notwithstanding that the duties or social attractions of professional or public life determine a residence elsewhere. But Murton was a place of 100 acres in extent with a house which Mr Shepherd kept up chiefly as a residence for his sisters. It was not his principal residence, nor was it the seat of his fortunes. It is noticeable that when released from official duties, Mr Shepherd's visits to Murton were not different in character from those he had been in use to make, although having more leisure he naturally took a somewhat longer holiday. I therefore come without difficulty to the conclusion that Mr Shepherd became domiciled in Scotland. I think that the choice of this domicile cannot be put later than his marriage, because at this time his habits, the character of his residence in the neighbourhood of Edinburgh, and his intention of remaining there for an unlimited time, were the same as in the later period of his life. I think this is a case of the kind figured by the Vice-Chancellor in his opinion in the case of *Doucet*, 9 Ch. Div. 441, where he says that "a residence originally temporary and intended for a limited period might afterwards become general and unlimited," adding that "as soon as the *animus manendi* could be inferred the fact of domicile was established." These considerations seem to me to determine the domicile of origin of Miss Shepherd, the testatrix, to be in Scotland.

On the remaining part of the case I shall only say that I concur in the opinion of the Lord President, that the evidence tending to the establishment of a domicile of choice on the part of Miss Shepherd is inconclusive. Notwithstanding the fact of the sale of her father's house in Portobello, and her residence for nearly two years at Penrith, she must be held to have retained her domicile of origin if the English residence was only experimental, and in my opinion this was its true character. On this subject I adhere very firmly to the principle enunciated by Lord Westbury in the *Udny* case, that a domicile of origin may be suspended, but is never extinguished, a principle that has come down to us from the Roman Law, Cod. 10, 38, 4. The abandonment of the Scottish residence would therefore have no effect upon the domicile of origin, unless there were superadded facts from which we could infer the acquisition of an English domicile.

In this case we have had the advantage of a very full review of the authorities by counsel on both sides. I have attentively considered all the authorities cited to us, but I may say rather with the view of discovering principles than comparing facts. The assemblage of facts constituting the present case is unlike any of the previous cases that I know of. In my opinion they lead to the result at which the Lord Ordinary has arrived, and I am for adhering to the interlocutor under review.

LORD KINNEAR was absent from part of the hearing, and gave no judgment.

Counsel for the reclaimers stated that parties had agreed that the expenses incurred in the Outer House should come out of the estate, but that no such agreement had been made with regard to Inner House expenses. He moved that the same course should be adopted, on the ground that the question at issue was one of difficulty, on which it was necessary in the interests of all parties to obtain a judicial decision. The children for whom the *curator ad litem* appeared had benefitted greatly by the raising of the case and the decision therein, and it was not reasonable in them to object to the motion. The trustees assented to the motion, which was however, opposed by the *curator ad litem* and the respondents.

LORD PRESIDENT—I cannot see any justification for throwing these expenses upon the children. Whatever may have been

the grounds on which the parties found, the question was purely and entirely fought out between two sets of legatees, and the children had nothing to do with it, though they were very properly represented here by counsel who watched the different stages of the case.

LORD M'LAREN—I agree. I think if the leading conduct of this case had been by trustees seeking for guidance as to what the testamentary instruments consisted of, they might, if unsuccessful in the view maintained by them, have been fairly entitled to charge expenses against the estate. There are cases where trustees are obliged to take up the question, because there is no one else to do so. But where the conduct of the litigation is left purely in the hands of two sets of legatees interested in raising it, I agree that expenses should follow the result.

LORD ADAM and LORD KINNEAR (who was present at the argument on this part of the case) concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel for the parties on the reclaiming-note for the defenders Richard Ballingall Neville as an individual and Miss Jeanette Helena Jenkins, Refuse the said reclaiming-note: Adhere to the interlocutor, dated 30th April 1897, of Lord Kyllachy reclaimed against: Find and declare in terms of the declaratory conclusions of the summons, and decern: Further, find the defenders and reclaimers the said Richard Ballingall Neville as an individual and the said Miss Jeanette Helena Jenkins liable jointly and severally to the pursuers and respondents in the expenses of process incurred by them since the date of the interlocutor reclaimed against: Remit the account of such expenses when lodged to the Auditor to tax and to report: Find the expenses incurred by the trustees of Miss Jessie Shepherd, the testatrix, and by the *curator ad litem* to the pupil children of the defender, the said Richard Ballingall Neville, form a good charge against the trust-estate of the said Jessie Shepherd as the same may be respectively taxed as betwen agent and client by the Auditor, and *quoad ultra* make no further finding as to expenses."

Counsel for the Pursuers — Dundas — Wilton. Agent—John Forgan, S.S.C.

Counsel for the Defenders Richard Neville and Miss Jenkins—H. Johnston—J. C. Watt. Agents—William Lennox, S.S.C., and Bell & Bannerman, W.S.

Counsel for the Defenders Miss Shepherd's Trustees—Orr. Agent — Arthur S. Muir, S.S.C.

Counsel for the Curator ad Litem—Cook. Agents — Morton, Smart, & Macdonald, W.S.

Thursday, December 2.

SECOND DIVISION.

[Dean of Guild Court, Paisley.

M'LELLAND *v.* MONCUR.

Police — Street — Width of New Streets — Court forming Common Access—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *secs.* 152 *and* 4, *sub-sec.* 10.

By section 152 of the Burgh Police (Scotland) Act 1892 it is enacted that "it shall not be lawful to form or lay out any new street, or part thereof, or court, within the burgh, unless the same shall . . . be at least thirty-six feet wide for the carriageway and foot-pavements." A court, where by the context it applies to a space contiguous to buildings, is defined by section 4, sub-section 10, as "a court or recess or area forming a common access to lands and premises separately occupied, including any common passage or entrance thereto." Sub-section 27 provides that a "private court shall mean a court maintained by persons other than the commissioners."

In an application to a Dean of Guild Court for warrant to erect tenements of dwelling-houses, the plan showed that two of the tenements were entered from an open space of ground 15 feet wide belonging to the petitioner, and connected by a gate for foot-passengers with a proposed new street. This open space was bounded on the north by the tenements, and on the south by a piece of ground which belonged to another proprietor, and was unbuilt on and separated from the open space by a parapet wall and railing.

Held (1) that the open space was a court within the meaning of section 4, sub-section 10, and not a private court under sub-section 27; and (2) that in order to comply with section 152 the petitioner must increase its width to 36 feet on his own ground.

Police—Buildings—Open Space Attached to Dwelling-houses—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 170.

By section 170 of the Burgh Police (Scotland) Act 1892 it is enacted that "every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted and ventilated from an adjoining street, or other open space directly attached thereto, equal to at least three-fourths of the area to be occupied by the intended building."

An application was made for warrant to erect buildings to be used as dwelling-houses, 41 feet in width, and with rooms lighted and ventilated from an open space of ground 15 feet in width belonging to the petitioner, and bounded on the north by the proposed buildings, and on the south by a piece of ground which belonged to another proprietor,