

pense of a remit to the auditor, he has modified to £5, 5s.

“R. M.F.”

This interlocutor was acquiesced in by the defenders.

Counsel for Trustee—Mr F. W. Clark. Agent—L. Mackersy, W.S.

Counsel for Defenders—Mr Pattison and Mr George M'Ewan. Agent—William Mason, S.S.C.

(Before Lord Ormidale.)

SANDERSON AND OTHERS v. OFFICERS OF STATE.

Crown—Succession Duty—Declarator of Legitimacy—Competency. Persons charged with succession duty on the footing that they were illegitimate children raised an action of declarator of legitimacy calling the Officers of State as defenders. Held (per Lord Ormidale and acquiesced in), that the action was incompetent, as the Officers of State did not represent the Crown in matters of revenue.

Moses Jacob died in 1865, leaving a settlement dated in 1854, by which he bequeathed his estate to trustees for division among *inter alios* the pursuers, who are therein described as his natural children. After his death the pursuers tendered payment to the officers of Inland Revenue of succession duty at the rate payable by children—namely, 1 per cent. This was declined on the ground that ten per cent. was payable, the pursuers not being lawful children. Proceedings were then taken at the instance of the Lord Advocate in the Court of Exchequer for recovery of the duty; and the pursuers thereupon raised this action against the Officers of State to have their legitimacy declared. They averred that their parents were married by cohabitation and habit and repute.

The defenders pleaded that the action as against the Officers of State was incompetent and irrelevant, they not representing the Crown in regard to matters of revenue. Lord Ormidale sustained this plea, and dismissed the action with expenses. The pursuers acquiesced.

Counsel for Pursuers—Mr Webster. Agent—James Finlay, S.S.C.

Counsel for Defenders—Mr Scott. Agent—James Hope, W.S.

BILL CHAMBER.

(Before Lord Mure.)

LOVE AND OTHERS v. CAMPBELL AND OTHERS.

Poor—Assessment—Exemptions—Suspension. A suspension to interdict the collection of poor rates in a parish on the ground that the Parochial Board had resolved to grant exemptions in a manner said to be illegal, *refused*.

This was a suspension and interdict presented by certain ratepayers in the parish of Stevenston against the Parochial Board of that parish, whereby it was sought to “interdict, prohibit, and discharge the respondents as representing the Parochial Board of the parish of Stevenston, from collecting the assessment for relief of the poor of said parish for the year from 5th August 1866 to 5th August 1867, from one class of the ratepayers alone, and, in particular, from exempting from payment of said assessment in said parish for said year all tenants under £4 of rental, as a class, and without reference or inquiry into the special circumstances of particular claims to exemption, or

from in any way carrying into effect the resolution to relieve such tenants as a class from payment of said rates adopted at a meeting of the Parochial Board of said parish of Stevenston, held on 2d November 1866.”

The ground of suspension was that the resolution was illegal. The respondents answered that it was warranted by section 42 of the Poor Law Act, which authorised Parochial Boards to exempt any persons or class of persons on the ground of inability to pay.

The Lord Ordinary (Mure) refused the note, with expenses. The following is his

Note.—As the object of this suspension is not so much to obtain exemption from payment of an assessment, for which the complainers allege they are not legally liable, as to try the legality of a resolution of the Parochial Board of the parish of Stevenston relative to the manner in which the assessment in that parish is to be laid on and levied, and in the meantime to interdict the Board from carrying out that resolution, the Lord Ordinary doubts whether the complainers have a title to try that question, at least in a suspension. But, assuming the title and interest to be sufficient, the Lord Ordinary does not think he would be warranted in passing the note and granting interim interdict, when neither caution nor consignation is offered, especially in the case where, as here, the mode of levying complained of appears to have been acted on without objection for several years.

The suspenders acquiesced.

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

Counsel for Parochial Board—Mr John Burnet. Agent—John Thomson, S.S.C.

Tuesday, Feb. 12.

FIRST DIVISION.

RAMSAY v. RAMSAY.

Husband and Wife—Divorce—Goods in Communion—Paraphernalia. In an action by a wife against her husband, whom she had divorced, for her share of the goods in communion and for delivery of her *paraphernalia*, Held that she had failed to prove that there were goods in communion at the dissolution of the marriage, or that the defender had carried off any of her *paraphernalia*.

This was an action at the instance of Margaret Anderson Dewar or Ramsay, Cupar-Fife, against Peter Ramsay, jun., Woodhaven, for £500, or such other sum as shall be found to have been the pursuer's share of the goods in communion at the dissolution of the marriage betwixt her and the defender by divorce on 9th March 1860, and also for delivery of her gold watch and other *paraphernalia*. The defence was that when the marriage was dissolved there were no goods in communion in existence, and that if there were any *paraphernal* goods they were not in the defender's possession. The Lord Ordinary (Kinloch), after a proof, assolized the defender, observing in his note:—“The question for proof was not what amount of funds the pursuer possessed when she married the defender in June 1851, but what funds were extant and formed goods in communion at the dissolution of the marriage by the decree of divorce of 9th March 1860. The pursuer has failed to establish any specific amount of funds then existing. The evidence, which is very contradictory, raises a

strong surmise that the defender's father received by way of loan a portion of the pursuer's money, particularly the £200 received from Mr Black in November 1851, and if that money had been fixed on the father as a loan, the amount might have been held a valid asset of communion goods, the father not being said to be insolvent or unable to repay the advance. But the Lord Ordinary cannot hold the conflicting evidence judicially to establish the fact. The pursuer has also failed to prove by sufficiently conclusive evidence that at the dissolution of the marriage the defender carried off, and has never returned, the gold watch belonging to her. The Lord Ordinary has found no expenses due, because the circumstances disclosed in the proof are such as raised a justifiable belief on the pursuer's part that money was due to her; and, in the Lord Ordinary's apprehension, the defender by no means goes out of process with his hands entirely clean.

The pursuer reclaimed.

CAMPBELL SMITH was heard for her on the import of the proof.

REIND, for the defender, was not called on.

The Court unanimously adhered, but without expenses.

Agents for Pursuer—Ferguson & Junner, W.S.

Agents for Defender—Jardine, Stodart, & Frasers, W.S.

Tuesday, Feb. 12.

SECOND DIVISION.

KINLOCH AND OTHERS v. BELL.

Teinds—Titular—Heritor—Decree of Valuation—Locality—Reduction—Title to Sue—Negative Prescription. An heritor of a parish who had in two processes of augmentation paid upon his lands as unvalued, discovered a decree of valuation dated 1811, and brought an action of reduction of the decrees of locality. The titular, heritors, patron, and minister of the parish then brought an action of reduction of the decree of valuation, against which the defender pleaded that none of the parties had a title to sue and that the right of action was cut off by the negative prescription. Held—(1) that the titular had no right to sue, his right being extinguished as the heritor held all the teinds of the parish as heritable rights; (2) that the heritors had no right to sue a reduction, because they are not entitled to state objections which require a reduction to give effect to them, and any objection to the effect of getting rid of an over burden may be pleaded *ope exceptionis* in the process of reduction of the decrees of locality; (3) that the patron and minister had a title to sue; (4) that the negative prescription cut off grounds of reduction on the head of incompetency that did not appear *ex facie* of the decree.

This is an action concluding for reduction of a valuation of teinds obtained by the defender's author in 1811, and is brought by the patron, the titular, the minister, and several of the heritors of the parish of Athelstaneford, in the county of Haddington.

By a final decree of locality pronounced in 1825 in a process of augmentation and locality, brought in 1822, the teinds of the defender's lands, then belonging to Sir Francis Walker Drummond, were localled upon as unvalued. Another process of augmentation was brought in 1859, after the

defender had acquired right to the lands, and the teinds were again localled upon as unvalued. Sir F. Walker Drummond and the defender paid the stipend so localled until 1862 without objection. But in 1862 he discovered the decree of valuation which is now sought to be reduced, and in 1863 he brought an action of reduction of the decrees of locality in the two previous processes of augmentation. The minister, the Presbytery, and all the heritors of the parish were called as defenders in that action, and in support of the defences then prepared the present action has been brought to reduce the valuation.

The defender objected that none of the parties had a title to sue; and further, that the title to sue was cut off by the negative prescription.

The Lord Ordinary (Barcaple) repelled the pleas stated for the defender against the title to sue the action, but found that the right to sue the action is cut off by prescription. His Lordship accordingly assolized the defender.

Both parties reclaimed.

WEBSTER and BALFOUR, for pursuers.

SOLICITOR-GENERAL and DUNCAN, for defender.

At advising,

LORD JUSTICE-CLERK—The Lord Ordinary has repelled the pleas stated by the defender against the title to sue this action, and against this part of the interlocutor the defender has reclaimed. But his Lordship has also found that the right to sue the present action is cut off by the negative prescription, and on that ground has assolized the defender. Against this part of the interlocutor the pursuers have reclaimed.

It is necessary, in the first place, to dispose of the reclaiming note for the defender, and in doing so I am disposed to think that we cannot safely affirm, as a general proposition, the title of all the pursuers to sue this action of reduction for decree of valuation.

The title of Mr Dalrymple of Hailes, as libelled, is an unexceptionable title to sue, for in the summons he is expressly described as titular of the teinds of the parish. But it turns out, in point of fact, that the whole teinds of this parish are held by the heritors on heritable rights; or, in other words, the whole teinds originally belonging to the titular have been transferred in property to the heritors, and he who was titular has no longer any estate in the teinds. In a parish so circumstanced there is no titular, and therefore Mr Dalrymple does not possess the title libelled.

The right of titularity being thus extinguished, it follows that the only parties who have any right or interest in the teinds adverse to that of the heritors are the patron and minister as representing the benefice. The teinds belong to the heritors as part of their estates, except in so far as they are required for stipend. But as the whole teind may come to be required for stipend, and may, in progress of time, be found insufficient to provide an adequate stipend, the patron and minister have a clear and direct interest to resist any proceeding having for its object the limitation of the amount of teind. Hence their title to sue a reduction of a decree of valuation, or to resist or defend a process of valuation or of approbation, is clear and well established.

The remaining pursuers are the heritors of the parish other than the defender, all having heritable rights to the teinds of their own lands respectively. Their title to sue is attended with much more difficulty.

It has been settled in a series of cases beginning with *Abercromby v. Erskine* in 1800, and ending