

The case was then brought before the Lord Ordinary with reference to the conclusions of the summons, for aliment. The parties adjusted a minute of admissions in regard to the defender's means. The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel on the conclusions of the summons in so far as not already disposed of, with a joint minute for the parties, No. 54, productions, and whole process—Decerns against the defender for payment to the pursuer of the sum of £100 sterling yearly of aliment to her, but under deduction of any sum already decerned for in name of aliment in this process; the said aliment to be payable at four terms in the year, Lammas, Martinmas, Candlemas, and Whitsunday, by equal portions, beginning the first term's payment thereof at the term of Lammas 1867 for the quarter immediately succeeding, and so forth quarterly thereafter, and in advance, during the joint lives of the pursuer and defender, with interest as concluded for: Finds the pursuer entitled to expenses in so far as not already paid; allows an account thereof to be lodged, and remits the same to the auditor to tax and to report."

The defender reclaimed.

PATTISON and CRICHTON for him.

CLARK and BLACK in answer.

The Court altered, and fixed the sum of £85 as aliment for the wife, and reserved power to either of the parties, if any material change of circumstances occurred, to come to the Court to alter the amount. They held that the revenue of several years must be taken into account in estimating the income of the husband, and that one-fourth of the husband's income was a reasonable provision for the support of the wife. In estimating the wife's aliment, the support of the children could not be considered, although they were living with her. The father was bound to support them, and whoever maintained them would have a claim against him.

Agent for Pursuer—W. H. Muir, S.S.C.

Agent for Defender—James Young, S.S.C.

Tuesday, October 27.

STEWART v. MACNOCHIE AND FORSYTH.

*Suspension—Poor—8 and 9 Vict., c. 83—Assessment—Deductions—37th section.* Held that suspension was a competent form of action in which to try an objection by a ratepayer that too much assessment was imposed upon him, in respect he did not get the benefit of all the deductions allowed by the 37th section of the Poor Law Amendment Act.

This was a suspension of a threatened charge for poor-rates by the Parochial Board of Keith against one of the ratepayers, Mr Stewart of Auchlunkart. In this parish the assessment for the relief of the poor is imposed according to the first mode provided by the 34th section of the Poor Law Amendment Act, and has been so imposed since shortly after the passing of that Act. In terms of the 36th section of the statute, lands and heritages in the parish are classified, with the assent of the Board of Suspension, into houses and agricultural subjects. The deductions allowed by the 37th section have been during the same period in use to be estimated by allowing a slump deduction of 4 per cent. for houses, and 5 per cent. for agricultural subjects. On the 1st of May 1866, a circular having been

previously sent to the members of the Board, and among them to the complainer, who is a member as an heritor, a meeting of the Board was held for the purpose *inter alia* of imposing the assessment. The complainer did not attend this meeting. The assessment was duly imposed; and on 7th January 1867 the complainer received from the collector a note of the amount of assessment imposed upon him, with an intimation that if he had anything to object to he must do so before the 5th of February. On the 4th of February, the previous day, a letter was received by the Board from the Edinburgh agents of the complainer, objecting to the amount of assessment imposed on him, and that he had not been allowed all the deductions to which he was entitled under the 37th section of the statute. The consideration of that letter was for unavoidable reasons deferred by the Board. The complainer thereafter brought the present note of suspension, in which he maintained that the mode of estimating deductions was contrary to the statute, which required the case of each individual heritor to be separately dealt with. These facts were admitted by the Board, but they averred that this mode of estimating deductions had been in force in the parish for more than twenty years without objection on the part of the complainer, and that he had homologated the acts of the respondents. The Board maintained the mode of estimating deductions to be quite in conformity with the statute, but they pleaded that the question which the complainer raised could not competently be tried in a suspension, and that he must bring a declarator.

The Lord Ordinary (JERVISWOODE) sustained this plea; and, without considering the merits of the case, pronounced the following interlocutor:—

"The Lord Ordinary having heard counsel, and made avizandum, and considered the closed record and whole process—finds, as matter of fact, that the assessment for relief of the poor in the parish of Keith, of a charge or threatened charge for payment of which, so far as laid upon the complainer, he here craves suspension, was imposed at the meeting of the Parochial Board of the parish, held on the 1st May 1866; and that the said assessment was laid on the owners and occupiers of heritable subjects in the parish according to the mode of valuation which had for several previous years been adopted and in force in the parish; and that the complainer did not state his objections against the same, so far as he was affected thereby, until the 4th of February 1867: And further finds, as matter of law, with reference to the foregoing findings, that the complainer is not entitled to insist in the present suspension, or to obtain interdict as craved: Therefore dismisses the note of suspension, and decerns: Finds the respondents entitled to their expenses, of which allows an account to be lodged, and remits the same to the auditor to tax and to report."

"*Note.*—The argument in support of the competency of the present suspension as a proper mode of procedure under which to try the question, which it is the object of the complainer to bring to judicial determination, was mainly based on the authority, as a precedent, of the case of the *Edinburgh and Glasgow Railway Company v. Meek*, Dec. 10, 1864 (8 Macph. p. 329), in which the competency of a suspension as a process, under which was raised a question as to the sufficiency of the deductions allowed to the company in ascertaining the value of their property, was sustained. Other cases of a like class were also referred to. But the Lord Ordinary is of opinion that the authorities are not

directly applicable here, and that there exist cogent reasons for refusing the present suspension. In the case of *Meek* the complaint was not directed, as here, against the whole system of assessment in the parish, but merely against the particular estimate, or mode of estimating the value of the property of the complainers. It was therefore not difficult to determine that matter, and to leave the subject of the actual money relief for readjustment among the rate-payers. But were the Lord Ordinary to adopt the views pressed upon him on the part of the complainer here, it must follow as a necessary result that the whole assessment for the year 1866-67 must be subjected to readjustment. No other course could, with justice to other rate-payers, be proposed. But is this to be allowed now, when the only consequence of refusing the suspension is to leave the present assessment to take effect meanwhile, as in former years, while the complainer is still free to adopt other measures adequate for the determination of the question which he has here raised, and at the same time free from the objections to which this particular form of process is open? The Lord Ordinary thinks otherwise, and that there are strong grounds on which to decline to sustain this process."

The complainers reclaimed.

J. C. SMITH (with him GIFFORD) maintained that suspension was a competent form of bringing the question before the Court, and that that was the form of action invariably adopted. He referred to the following cases—*Edinburgh and Glasgow Railway Co. v. Meek*, 10 Dec. 1864, 3 Macph. 229; *Glasgow Gas Light Co. v. Adamson*, 23 March 1863, 1 Macph. 727; *Edinburgh and Glasgow Railway v. Hall*, 19 Jan. 1866, 4 Macph. 301.

W. A. BROWN (with him CLARK) answered—The authorities quoted apparently support the competency of the action, but it does not appear from the reports that the objection was taken in the pure form in which it arises here. In these cases, the parties were apparently willing to try the question in a suspension, but here the respondents objected because that would be a highly inconvenient course. In *Tod v. Mitchell*, 26 Jan. 1858, 20 D. 445, where this objection was raised purely, the Court had laid down the principle of law applicable adverse to the suspender. But this question did not depend so much upon abstract considerations of law as on the circumstances of the case. The complainer had waited to the very last moment before taking his objection, and was not entitled to bring a suspension, and thereby impose a penalty upon future rate-payers, after the greater part of the assessment of the parish had been collected and paid for the relief of the poor. Moreover, the objections which the complainer was entitled to make up to the 5th of February were, in virtue of the 40th section of the Poor Law Amendment Act, mere errors or surcharges, not objections cutting at the principle of the assessment.

At advising—

LORD COWAN would have liked to have heard some of the cogent reasons referred to by the Lord Ordinary in his note. He says that it must be a necessary result of adopting the argument of the complainer that the whole assessment for the years 1866-67 must be subjected to readjustment, but no such thing happened, and that view had been properly passed from by the respondents. What was conclusive to him in the matter was, that while a great many cases had been quoted in which such questions had been tried by suspension, the respon-

dents had not been able to lay their hands upon one in which a suspension had been imposed. He expressly reserved his opinion on the merits, and it might be that the pleas of acquiescence and homologation maintained by the respondents would throw out the action, but these questions could be competently tried in a suspension.

LORD NEAVES—Under the old law illegal assessment would be competently corrected by suspension, so far as the suspender was affected by the error; and the Act of 1845 studiously reserved to rate-payers the rights competent to them under the old law.

LORD JUSTICE-CLERK concurred.

The Court accordingly remitted to the Lord Ordinary to hear parties on the merits.

Agents for Complainer—Maitland & Lyon, W.S.  
Agent for Respondents—Alexander Morison, S.S.C.

Tuesday, October 27.

NOTE FOR THEODORE RICHARD SCHWEITZER.

*Diligence—Warrant to Arrest—Sheriff Officer—Messenger-at-Arms.* There being no messenger-at-arms to put a warrant of arrestment into execution, authority granted to a sheriff officer to execute the diligence.

This note stated that the petitioner had obtained decree against the Earl of Orkney for a certain sum, with power to arrest, and prayed for warrant to a sheriff-officer to put the warrant into execution. The note stated that there was no messenger-at-arms resident in Orkney. The nearest was at Caithness, which was at a considerable distance, and there might be considerable delay. Under the recent Act, a sheriff-officer might serve a summons but not a diligence. The Court granted the authority prayed for.

Counsel for the Petitioner—Mr Pattison.  
Agent—William Mason, S.S.C.

Thursday, October 29.

## FIRST DIVISION.

LONGWORTH *v.* YELVERTON.

*Jurisdiction—Foreign—Reduction—Status—Recognition.* A domiciled Irishman brought in the Court of Session a declarator of freedom and of putting to silence against an Englishwoman, who then brought against him a declarator of marriage. The actions were conjoined. Decree of declarator of marriage was pronounced by the Court (reversing the judgment of the Lord Ordinary), but the decision was reversed in the House of Lords. The Englishwoman then brought in the Court of Session a reduction of the judgments of the Lord Ordinary and of the House of Lords, on the ground that these Courts had no jurisdiction to pronounce them. Action *dismissed*, in respect that the defender was not now, or at the date of raising the action, subject to the jurisdiction of the Scotch Courts. *Opinion*, that the Courts of the country in which the parties are domiciled, will not be bound by any judgment of this Court and the House of Lords, which these tribunals can be shown to have had no jurisdiction to pronounce.