general rule. If the defender had insisted on taking up a special point in his case, and going to issue on that, the case might have been different, but that is not so, all that is proposed by him is in the ordinary course.

Agents for Pursuers—D. Crawford and J. Y. Guthrie, S.S.C.

Agents for Defender—Mackenzie & Black, W.S.

Thursday, October 29.

COLQUHOUN *v.* BUCHANAN AND OTHERS.

Salmon-fishing—Salmon Fisheries Act 1867, 25 *and* 26 *Vict., c.* 97*—Roll of Upper Proprietors—Reduction—Held,* on a proof, that certain proprietors of lands on the banks of a river did not possess the qualification required by the Salmon Fisheries (Scotland) Act 1867 to entitle them to be on the roll of upper proprietors of salmon-fishings.

This was an action of reduction and declarator at the instance of Sir James Colquhoun of Luss, Baronet, against John Buchanan of Carbeth, Miss Barbara Govane of Park, Henry Ritchie Cooper of Ballindalloch, and Peter Blackburn of Killearn, and certain other parties. The question at issue was, whether these defenders were entitled to be on the roll of upper proprietors of salmon fishings in the district of Clyde and Leven, as possessing the qualification required by the Salmon Fisheries (Scotland) Act 1867, 25 and 26 Vict., c. 97, sec. 18?

By that section it is enacted that within three months after any bye-law constituting a district to be fixed and defined by the Commissioners appointed for that purpose shall have been published, "the Sheriff shall direct the Sheriff-clerk to make up a roll of the upper proprietors in each district, and the qualification of an upper proprietor shall be the property of a fishing entered in the valuation roll as of the yearly rent, or yearly value, of £20 and upwards, or, if such fishing be not valued on the valuation roll, of half a mile of frontage to the river, with a right of salmon fishing. . . . And the Sheriff shall have power to decide summarily any question arising on any claim to such qualification."

The Sheriff-clerk of Stirlingshire, in making up the roll under the statute, put thereon the names of the defenders, who, or their mandatories, attended meetings of the board, and acted as such members, under protest by the pursuer, who contended that the defenders were not entitled to act.

The pursuer, who is proprietor of salmon-fishings in both the upper and lower divisions of the Clyde and Leven district, now raised this action, asking reduction of the roll of upper proprietors, in so far as it included the names of the defenders, and also reduction of certain minutes of meeting of the board, and declarator that the defenders had no qualification entitling them to be upon the roll.

Defences were given in for Buchanan and Blackburn. The former, as proprietor of Little Carbeth and Dalnair, upon Crown charters, conveying the lands, with clauses *cum piscationibus,* these lands being situated on the Enrick, in the upper division of the said district, and having each, it was alleged, the requisite frontage; the latter, as proprietor of Drumtian and others, of similar situation and extent, with the mills, woods, and fishings of the same," alleged that by themselves and their authors they had been in use for a period of more than forty years to fish for salmon in the Enrick *ex adverso* of their lands by all competent and habile rights, and claimed right to be retained on the roll.

In November 1864 the Court, recalling an interlocutor of the Lord Ordinary, repelled certain of the defences as preliminary, and remitted to the Lord Ordinary to proceed with the cause. A proof was thereafter taken, after which the Lord Ordinary found that the defenders had failed to prove that they or either of them had fished for salmon *ex adverso* of their respective lands by net and coble, or by other competent and habile methods, as alleged by them; Found, therefore, that they held no title sufficient to qualify them to act as proprietors of a salmon-fishing, under the Salmon Fisheries Act, 1867, and accordingly decerned against them, with expenses.

The defenders reclaimed.

LORD ADVOCATE and HALL for reclaimers.

WATSON for respondents.

The Court adhered.

Agents for Pursuer—Tawse & Bonar, W.S.

Agent for Defenders—James Macknight, W.S.

Thursday, October 29.

GILLESPIE *v.* HONYMAN.

Husband and Wife—Action—Reduction ex capite lecti*—Heir-at-law. Held* that a husband was not entitled to compel his wife, proprietrix of an entailed estate, to sue a reduction *ex capite lecti* of a bond of annuity granted by her father, former proprietor of the estate, in favour of her mother.

This was an action raised by William Gillespie of Torbanehill, in the name of "Mrs Elizabeth Honyman or Gillespie of Torbanehill, heiress of entail of the deceased Sir R. B. Johnston Honyman, Baronet, and as such, in possession of the lands and estates of Torbanehill and others, spouse of William Gillespie of Torbanehill, with consent and concurrence of the said William Gillespie, and the said William Gillespie for himself and his own right and interest in the premises," and also as receiver of the rents *jure mariti,* against Dame Elizabeth Campbell or Honyman, mother of Mrs Gillespie, and relict of the late Sir R. B. Johnston Honyman. The object of the action was to reduce, *ex capite lecti,* a bond of annuity granted by the deceased Sir R. B. Johnston Honyman in favour of the defender.

The defender pleaded, *inter alia,* that the pursuer had no right to use the name of Mrs Gillespie in the action, she not having given any authority for such use; and contended that as Mrs Gillespie repudiated the action, it ought to be dismissed, in so far at least as it bore to proceed at Mrs Gillespie's instance.

The Lord Ordinary (JERVISWOODE) sustained this plea, adding the following note:

"The matter which the Lord Ordinary has dealt in the present interlocutor is one of some difficulty, but on the whole, after the best consideration which he has been able to bestow on the able argument which was on both sides submitted to him, and on the decisions in the cases of *Wedderburn's Trustees* v. *Colville,* Jan. 29, 1789, M. 10,426; *Aitkins* v. *Orr,* Feb. 11, 1812, M. 16.140; and *Ferguson* v. *Cowan,* June 3, 1819. which is reported but briefly by Baron Hume (Decisions, p. 222), he has come to the