

ground, and decree following thereon, acquired a real and preferable right to the said furniture, the said Isaac Lyons is not entitled to deduct or retain from the proceeds thereof any sums said to have been advanced by him to the granters of the said bond, or any of them."

The Lord Ordinary (ADAM) sustained the objections for the objector Francis Manford.

Lyons reclaimed, and argued—The execution of the poiding alone, and not the mere service of summons, gave the preference here.—2 Bell's Com., pp. 57, 61.

The objector argued—The service of summons was quite sufficient. It was equivalent to a seizure of the debtor's property by the creditor, and vested him with the right to that property. His future course was only to realise the property.—*The Royal Bank v. Bain*, 6th July 1877, 4 R. 985; *Campbell's Trustees v. Paul*, 13th Jan. 1835, 13 Shaw 237; *Barstow v. Mowbray*, 11th March 1856, 18 D. 846.

At advising—

LORD JUSTICE-CLERK—My impression was certainly strong that a heritable creditor who raised an action of poiding the ground could not compete with personal creditors executing diligence until he had actually executed his poiding. But the cases which have been quoted indicate otherwise, and guided by them here we must hold that the poider as soon as he executed his summons of poiding interpellated his debtor from conferring rights in the subjects poided.

LORD GIFFORD—I concur. We are shut up by these cases, which must rule the present case.

LORD YOUNG—As soon as the facts of the case were explained it was quite plain that the dispute between the poider and the defenders turned on the question whether any, and if so, what, virtue existed in the execution of the summons of poiding the ground, and at an early stage of the case I asked whether the question was not determined by authority. If no virtue attached to the mere execution of the summons in the way of restraining the debtor from dealing with the goods and conferring a right by his voluntary act on others, then it is plain that the heritable creditor's right of poiding the ground would be worthless, for the actual poiding of the ground by him is the end of a somewhat long course of procedure, beginning with the execution of the summons, which is only a long notice to the debtor. I am therefore not surprised that it has been distinctly decided that the execution of the summons has virtue in restraining the debtor from dealing with the goods as before.

This is the view of the law as established by these cases, and we now proceed on it, though it is an anomalous one undoubtedly, and in the opinion of many objectionable, viz.—that a creditor having a security over land has also a real right in the moveables on the land of a peculiar character, for it does not operate in restraining the debtor from conferring rights on other persons over them so long as he is not interpellated; but then the execution of the summons acts as an interpellator, so that thereby the poiding of the ground is made valuable, which it would not be if the creditor had to depend on the actual completion of diligence. I therefore agree that this

is decided by authority, as alone it could be consistently with the practical existence of the real right in the heritable creditor. That right I repeat is anomalous, and in the opinion of many objectionable, but so long as it exists it would be worthless to hold that it was not to be efficacious till a long process of law had been gone through.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuer and Nominal Raiser—Millie. Agent—Andrew Clark, S.S.C.

Counsel for Respondents and Real Raisers—Strachan. Agents—Mack & Grant, S.S.C.

Friday, October 22.

FIRST DIVISION.

[Lord Adam, Ordinary.]

MONTGOMERY v. MONTGOMERY.

Husband and Wife—Divorce—Aliment—Expenses.

A husband obtained divorce in the Outer House against his wife, who reclaimed and presented a note for aliment to the Court after the case had gone to the roll. *Held* that she was entitled to aliment from her husband until the final judgment of the Court on her reclaiming-note, and to payment of a sum towards expenses of process incurred in the Outer House.

This was an action of divorce on the ground of adultery at the instance of James Montgomery, feuar and portioner in Airdrie, against Margaret Edmestone or Montgomery, his wife. The Lord Ordinary (ADAM) on 20th July 1880 pronounced decree of divorce. Against this interlocutor Mrs Montgomery presented a reclaiming-note. After the case had been put to the roll Mrs Montgomery presented a note to the Court in Single Bills applying for an allowance of aliment since 15th August 1880, up to which time she had received aliment from her husband, and pending the final decision upon her reclaiming-note; as also for a payment to account of expenses of process. It was admitted that Mrs Montgomery had received aliment up till 15th August 1880, under an agreement of voluntary separation, dated 2d March 1878, at the rate of 28s per week; and that while the action was in the Outer House, and before the proof was led, an allowance of £10 to account of expenses of process had been given by the Lord Ordinary.

Authority—*Ritchie v. Ritchie*, March 11, 1874, 1 R. 826.

At advising—

LORD PRESIDENT—We think the reclamer should have the aliment continued under that agreement at the rate of 28s. a-week from the date of the last payment, and that a sum of £30 should be paid towards the expense of leading the evidence. It must be distinctly understood that it is towards the expense of the proof that this sum is to be applied, and not towards the expense of printing the proof, which is a different matter, and forms part of the reclaiming-note.

The other Judges concurred.

The following interlocutor was pronounced:—
 “Decern against the pursuer and respondent for payment to the reclamer of aliment at the rate of 28s. a-week since 15th August last, to continue till final judgment in the cause; further, decern against the respondent for payment to the reclamer of the sum of £30 further to account of her expenses to the close of the proof in the Outer House.”

Counsel for Pursuer (Respondent)—Young.
 Agent—A. Morison, S.S.O.

Counsel for Defender (Reclamer) — Ure.
 Agent—T. Carmichael, S.S.O.

Friday, October 22.

FIRST DIVISION.

[Sheriff of Renfrew and Bute.

WALLACE v. DEAS AND DEMPSTER.

Poor—Poor Law Act 1845 (8 and 9 Vict. c. 83), secs. 69 and 76—Residential Settlement—Interruption of Residence by Parochial Relief.

M. having resided about four years and eleven months in a parish, and having fallen ill, was visited by the parish doctor, and received a small amount of medicine. Held that this was “parochial relief” in the sense of the Act, and was sufficient to break the acquisition of a residential settlement.

Andrew Wallace, Inspector of Poor for the Parish of Govan Combination, Glasgow, brought an action in the Sheriff Court of Renfrew and Bute, against John Strachan Deas, Inspector of Poor for the Parish of Greenock, and Archibald Dempster, Inspector of Poor for the City Parish of Glasgow, jointly and severally, or severally and according to their respective liabilities, for payment of certain sums expended by him during the years 1878 and 1879 for relief of Peter M’Neil, labourer, Glasgow, and his family.

M’Neil’s parish of birth was the City Parish of Glasgow, and a question had arisen whether or not he had since acquired a residential settlement in Greenock. At the proof before the Sheriff-Substitute a minute was put in for the two defenders admitting that the pursuer was entitled to decree against one or other of them, and relieving him from appearing further in the case, and in the subsequent appeals to the Sheriff and to the Court of Session no appearance was made for the pursuer.

At the proof before the Sheriff-Substitute Peter M’Neil, the pauper, deponed—“I once lived at No. 32 South Coburg Street, Glasgow. While a tenant there I left my wife and family and went to Greenock to work, and after working for not more than three weeks I removed my wife and family to Greenock. I got work in Caird & Co.’s foundry in Arthur Street, Greenock. I went first to lodge with Mrs Buntine in the Stanners, and was there for between four and six months, and then removed to a house opposite, where I remained for three or four months. I do not recollect who let me that house. Then we went to

lodge with a Mrs Ferguson in Dalrymple Street for about two months, when she left the house, and we remained as the tenants for about a year. After that we lived with a Mr Cunningham at No. 5 Crawford Street for about thirteen months, and then went to a Mr Gardiner in the same street for about six months. We next went to a Mr Kean in Charles Street, and stayed there for a year and a-half or two years. Then we took a house in Harvie Lane, and stayed there for a year at least. We next went to a Mrs M’Farlane in a street off Ardgowan Street, and stayed there for six or seven months. Then we stayed for three or four days with a Mr Broadley in Charles Street, after which we went to Ireland to see my wife’s relations. We stayed there for three or four weeks, and on our return went back to Broadley’s, and stayed for about six months. After leaving him we went back to Cunningham’s, in Crawford Street, and stayed there for about a year, and then went to Main Street, Cartsideyke, and stayed for nearly a year. I was working, off and on, during the whole of these periods spoken to, with the exception of a few weeks . . . My memory is not distinct as to dates. I took badly in the spring after my return from Ireland, and applied to the Parochial Board in Greenock for medicine and medical attendance. I was visited by Dr M’Culloch. That illness lasted for about a fortnight. So far as I recollect, he did not advise me to go to the poorhouse or the hospital. I was also visited by a clerk from the parochial board office, but he did not offer me the poorhouse at that time. He did so afterwards, when I was in the Main Street house. A minister named Kerr applied to the board for me at that time. He said that he would go and state my case to Mr Deas, and I said nothing against it. I got medicine that time too from Dr M’Culloch.” His wife corroborated him as to the sequence of their various abodes. From the books of the house-factor it was proved that M’Neil left the Coburg Street house in May 1871, the tenant after him having got possession of the room on 10th May 1871. No other witnesses were called for the City Parish of Glasgow.

For the parish of Greenock it was proved that M’Neil’s name appeared in Messrs Caird’s books from September 1864 to March 1866, from October 1866 to April 1867, and from 16th October 1872 till 9th October 1875, but did not occur in the interval. In Messrs Scott & Co.’s books his name appeared from 1st July to 1st September 1866, from 24th April to 18th May 1867, and from 26th June 1871 till 18th May 1872. It was also proved that on 23d May 1876 M’Neil applied to the parochial inspector of Greenock for relief; that on inquiry he was found to be suffering from pleurisy, and in such sickness and poverty as to render him a proper subject for such relief; that he was offered admission to the poorhouse, but declined it; and that he received medical relief for about three weeks, and medicines, the cost of the latter being about 2s. 2d. There was also evidence to show that the pauper had been absent in Dumbarton for three or four weeks in 1875, and in Ireland in the same year for several weeks.

The Poor Law Act 1845 (8 and 9 Vict. c. 83) provides, section 69—“That in every parish or combination it shall and may be lawful for the parochial board, and they are hereby required,