

Tuesday, January 15.

FIRST DIVISION.

[Lord Low, Ordinary.]

DELHI AND LONDON BANK

v. LOCH.

*Expenses—Amendment—Act of Sederunt, 15th July 1876—Session Fee.*

The pursuers in a petitory action were allowed to amend their record, under condition of paying the defender's expenses subsequent to the date of closing. The pursuers' amendments contained certain new averments as to Indian law, and, in order to get information to enable her to answer these averments, the defender employed Indian solicitors and took the opinion of Indian counsel. When the defender's account of expenses was submitted to the Auditor he disallowed the expenses connected with the inquiries made in India, on the ground that they were covered by the session fee, provided for in the second general regulation of the Act of Sederunt of 15th July 1876. Objections having been lodged by the defender to the Auditor's report, held that the pursuer's amendments having raised fresh questions of facts, the defender's inquiries into Indian law were legitimate expenses to be charged against the pursuer, and were not covered by the session fee.

An action was raised on 31st May 1893 by the Delhi and London Bank against Mrs Ann Loch concluding for payment of £6000, as executrix of her deceased husband John Adam Loch.

The pursuers averred that in 1847 they had lent John Adam Loch, who had been in the Bengal Civil Service, a sum of £1400; that in 1859 they had instituted legal proceedings against him for recovery of their debt in the Courts at Delhi, and had obtained decree for payment of 18,869 rupees, which with interest, and less certain payments made to account, made the sum now sued for.

On 17th February 1894 the Lord Ordinary allowed the parties a proof before answer. The defender reclaimed against this interlocutor.

On 16th March 1894, after counsel had been heard on the reclaiming-note, the pursuers were allowed to lodge a minute containing proposed amendments, and these were subsequently, on 26th October 1894, allowed on condition that the pursuers should pay the defender's expenses subsequent to the closing of the record.

The pursuers' amendments contained averments as to the rules and practice of the Delhi Courts, which did not appear in the record as originally framed.

To meet these averments the defender obtained the opinion of Indian counsel, and instituted an inquiry in India as to the practice of the district courts. When the defender's account was submitted to the Auditor for taxation he disallowed all expenses incurred by the defender in this

inquiry, and, *inter alia*, struck out an item of £30, being the "account incurred to the defender's Indian solicitors for procuring information at Delhi and elsewhere, necessary for preparation of answers." His ground for disallowing these items was that they were covered by the session fee, as provided by the Act of Sederunt of 15th July 1876.

The second general regulation of that Act provides that "The session fee provided in the table shall be held to cover all communications, written or verbal, between the agent or client, and also between the different agents who may be employed for the client."

The defender objected to the report on the ground that the items struck out did not fall under the rule of session fees.

The pursuer maintained that the rule did apply—*Consolidated Copper Company v. Peddie*, January 17, 1878, 5 R. 531.

At advising—

LORD PRESIDENT—The interlocutor in this case was to allow the pursuers' amendments on payment by them of the defender's expenses since the closing of the record. Now, the amendment was of an unusual character and introduced for the first time averments as to a state of law, which no one would assume at first sight to exist, involving information as to the rules and customs prevailing in local courts in India.

We have to consider what were proper expenses to be allowed since the closing of the record. The Auditor has solved the difficulty in a simple way by considering that all these expenses fall within the rule of sessional fees.

That rule seems to me to be quite inapplicable. We have to consider what course could be legitimately pursued in consequence of the amendment. There was necessarily an inquiry into questions of facts, because the pursuers' averments as to Indian law constituted fresh questions of facts, and such an inquiry does not fall under the rule of sessional fees. We are not in a position to go into details. The case must go back to the Auditor, for he has not considered the details, thinking that they were covered by the general sessional order.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"The Lords having considered the Auditor's report upon the defender's account of expenses, along with the note of objections to said report for the defender, and heard counsel for the parties, Remit to the Auditor to report of new: Find the defender entitled to the expenses of this discussion: Modify the sum to three guineas, for which decern."

Counsel for the Pursuers—Cooper. Agents—Henry & Scott, W.S.

Counsel for the Defender—W. Campbell. Agents—Boyd Jameson, & Kelly, W.S.

Saturday, January 19.

FIRST DIVISION.

[Lord Low, Ordinary.

LAMONT-CAMPBELL v. CARTER-CAMPBELL.

*Process—Entail—Petition to Fix Widow's Annuity—Competency.*

*Held* that a petition at the instance of an heir of entail to have the amount of the annuity fixed to which the widow of a former heir is entitled, is incompetent.

*Entail—Widow's Annuity—Yearly Rental or Value—Unpaid Feu-duty—Duplicands of Feu-duties—Interest upon Compensation for Lands Taken under Compulsory Powers.*

*Held* (*aff. judgment of Lord Low*), in calculating the free yearly rent of an entailed estate for the purposes of ascertaining the amount of an annuity of one-third thereof provided for a widow, (1) that where a portion of the entailed estate had been given out under a feu-contract, and no steps had been taken to irritate the feu, the feu-duty stipulated for was to be taken as the measure of its annual value, although no feu-duty had in fact been paid during the two years preceding the granter's death; (2) that where duplicands of feu-duties were recurring annually, the average of these was to be taken, and neither the sum actually received in the year of the granter's death, nor a percentage on their capitalised value; and (3) that where 5 per cent. was being received at the granter's death upon money to be afterwards paid by a railway company as compensation for lands taken under compulsory powers, that was to be regarded as the yearly value, although the entailed money after being paid would yield only 3 per cent.

*Entail—Annuity—Terms of Payments.*

An heir of entail executed a bond of provision wherein he provided an annuity to his wife, and directed that it should be uplifted at Whitsunday and Martinmas by equal portions, beginning the first term's payment at the first of these terms which should happen after his death, "for the half-year following, and so forth half-yearly and termly thereafter."

*Held* (*aff. judgment of Lord Low*) that the annuitant was entitled to payment at the terms specified in the bond.

Colonel Celestine Norman Lamont-Campbell, institute of entail in possession of the entailed lands of Possil and Keppoch, and certain entailed money, granted a bond of provision in favour of his wife, in virtue of the powers contained in the deed of entail and the Entail Acts, whereby he bound the succeeding heirs of entail to pay to her in the event of her survivance a free liferent annuity equal to but not exceeding one-

third of the free yearly rent or value of the said entailed lands and money as the same might be at his death.

Colonel Campbell died in January 1893, and after his death questions arose as to the amount of the annuity and whether it was payable in advance. The circumstances giving rise to these questions sufficiently appear from the opinions of the Lord Ordinary, and from the report of Mr J. P. Wright, W.S.

Accordingly, in November 1893 Mrs Carter-Campbell of Possil, the heiress of entail in possession of the said entailed lands and funds, presented a petition to the Junior Lord Ordinary to have the amount of the annuity or jointure payable to Mrs Lamont-Campbell, the widow of the said Colonel Lamont-Campbell, fixed by the Court.

Answers were lodged for Mrs Lamont-Campbell.

After hearing parties, the Lord Ordinary (Low) pronounced an interlocutor disposing of certain of the questions raised.

The following opinion (which is referred to in the action hereinafter mentioned) was appended to the Lord Ordinary's interlocutor—"1. There is first the question whether certain feu-duties should be taken into account in fixing the income of the estate.

"A feu of 35 acres was granted in 1874 for a feu-duty of £1195. The feu was acquired by the Phoenix Iron Company, which in 1891 granted a trust-deed for creditors. The feu-duty was regularly paid until Whitsunday 1891, since which date no feu-duty has been paid. The late Celestine Norman Lamont-Campbell, the granter of the bond of annuity which is in question in this petition, died on 27th January 1893.

"The petitioner argues that as no feu-duty was received for the year in which the late Mr Lamont-Campbell died, and as the vassals were insolvent, the yearly value of the ground contained in the feu should be taken at its agricultural value, viz., £90.

"I am of opinion that the petitioner's argument is not well founded. The feu-duty was regularly paid for seventeen years, and it was not paid for the year in which Mr Lamont-Campbell died and the preceding year, only because the vassals had become insolvent. I do not think that that is a sufficient reason for not taking the feu-duty as the annual value of the lands. If lands were let under lease, I apprehend that the rent stipulated in the lease would be taken as the annual value, although the tenant might have been unable, from circumstances personal to himself, to pay his rent for the year during which the heir of entail died. It seems to me that a similar principle is applicable here. . . .

"2. In 1891 the Lanarkshire and Dumbartonshire Railway Company took for the purposes of their undertaking some ten acres of land. The amount of compensation has been fixed by arbitration at £9372, with interest thereon at 5 per cent. per