Saturday, January 20.

FIRST DIVISION.

(SINGLE BILLS.)

BAILLIE AND OTHERS *v.* MOTHERWELL LICENSING COURT AND OTHERS.

(*See ante*, p. 58.)

Expenses—Taxation—Senior Counsel—Fee to Revise Summons.

The licence-holders in a burgh brought an action against the Licensing Court and others, concluding, *inter alia*, for reduction of certain proceedings in that Court which, without any objections being stated, had refused to renew their certificates in so far as those authorised the sale of spirits. The pursuers, who were 47 in number, sued in one action though the Licencing Court had dealt separately with each of them. They were successful in the litigation and were awarded expenses against the Licensing Court. Their account of expenses included a charge for a fee to senior counsel to revise the summons, and other charges incidental thereto. The Auditor disallowed those charges. *Held*, in a note of objections, that those charges ought to have been allowed, as in the special circumstances revision of the summons by senior counsel was advisable and expedient, and (*per* Lord Mackenzie) tended to save expense in the future conduct of the litigation.

Daniel Baillie and others, *pursuers*, lodged a note of objections to the Auditor's report on their account of expenses in an action by them against the Licensing Court of Motherwell and others, *defenders* (*v. ante* 54 S.L.R. 58).

The pursuers were forty-seven in number and were the whole of the licence-holders of all kinds in the burgh of Motherwell. The action concluded, *inter alia*, for reduction of the proceedings in the Licensing and Licensing Appeal Courts at Motherwell, at which, without any objections being stated, the Licensing Court had refused to renew the pursuers' certificates in so far as they authorised the sale of spirits, and the Appeal Court had adhered. In each case a separate deliverance was issued by the Licensing Court. The pursuers were successful in the litigation, and on 7th December 1916 the Court found the defenders first called (the Licensing Court) liable jointly and severally to the pursuers in expenses.

The Auditor having disallowed certain items in their account of expenses, the pursuers lodged a *note of objections* in the following terms:—

"The pursuers object to the Auditor's report, dated 18th January 1917, in so far as the Auditor has disallowed the following items, viz.—

"REVISION OF SUMMONS BY SENIOR COUNSEL.

Page	1916.		Amount of Charge.	Taxed Off.
1.	May 18.	At junior counsel's request, instructing senior counsel, Hon. Wm. Watson, K.C., to revise summons	£0 10 0	£0 10 0
	,, ,,	Paid him fee, and clerk	3 8 0	3 8 0
	,, 19.	Perusing summons as revised by senior counsel. 13 sh.	0 15 0	0 15 0"

Argued for the pursuers—The items taxed off should be allowed. There were forty-seven pursuers and there were forty-seven different deliverances of the defenders; a question of difficulty arose as to whether all the pursuers might sue in one action or whether forty-seven different actions would be necessary. The conclusions of the action were difficult. Further, it was certainly competent to have brought forty-seven different actions, which would all have been carried to the closing of the record, so that the course taken by the pursuers had saved the defenders the cost of that alternative procedure. In such special and exceptional circumstances those expenses had been properly incurred and should be allowed—*Dunlop's Trustees* v. *Alexander's Trustees*, 1854, 16 D. 1104; *Gibb* v. *Magistrates of Hamilton*, 1833, 12 S. 218; *Magistrates of Dundee* v. *Kerr*, 1834, 12 S. 310; *Black* v. *M'Lachlan*, 1833, 11 S. 544; *Lang* v. *Bruce*, 1832, 11 S. 90.

Argued for the defenders—The Auditor was right. He had allowed fees for a memorial to two junior counsel to prepare the summons and also to the agent. There was no need for senior counsel until the adjustment of the record. There was no need for taking in a senior to determine the form the proceedings should take. The ordinary rule should be followed. *Dunlop's* case (*cit.*) was not in point, for the fee there was in lieu of a memorial to counsel. The other cases had not been followed.

LORD PRESIDENT—With regard to the charges for the revision of the summons by senior counsel, I consider that this was a case in which the employment of senior counsel to revise the summons was advisable and expedient, and that the expense ought therefore to be allowed.

LORD MACKENZIE—I am of the same opinion. I should like only to add, with reference to the first point, that I think there are cases in which it is very much to the advantage of the cause and tends to save expense in the future conduct of the litigation if senior counsel are employed for the purpose of revising the summons; I say so having in my mind certain cases which have recently been before this Division of the Court.

LORD SKERRINGTON concurred.

LORD JOHNSTON was absent.

The Court allowed the items taxed off.

Counsel for the Pursuers—A. M. Mackay. Agent—James Purves, S.S.C.

Counsel for the Defenders—D. N. Wilson. Agents—Burns & Waugh, W.S.

Tuesday, January 23.

FIRST DIVISION.

[Lord Cullen, Ordinary.

MEIKLE AND OTHERS (WINGATE'S TRUSTEES) *v.* WINGATE.

Succession—Trust—Conversion—Approval by Beneficiary of Scheme of Division of Trust Estate.

A beneficiary, entitled to one-half of an estate held in trust, his right having vested, assigned it to the extent of five-sevenths to his mother. The assignation was duly intimated to the trustees. Thereafter the trustees submitted to the beneficiary a scheme of division of the estate. The scheme of division allocated to the beneficiary and his mother certain investments which were in the main heritable. The beneficiary wrote to the trustees stating that he was quite satisfied, and the mother's law agents also wrote stating that she agreed. The mother then died and the beneficiary (her son) claimed legitim out of the five-sevenths of the trust estate assigned to her. *Held* (*diss.* Lord Johnston) that the mother and son having approved of the allocation, their right to half of the trust estate was thereby converted into a right to the investments allocated to them, *in forma specifica*, and that the son was not entitled to legitim out of the five-sevenths of the estate assigned to his mother, but only out of such of the investments allocated to the mother as were moveable *sua natura*.

Succession—Trust—Legitim—Legitim Out of Estate of Assignee of Beneficiary under a Trust with Bonds and Dispositions in Security — Titles to Land Consolidation (Scotland) Act 1868 (32 *and* 33 *Vict. cap.* 116), *sec.* 117.

A beneficiary under a trust who had right to certain bonds and dispositions in security, assigned a right to his mother. She died and he claimed legitim out of her estate. The bonds and dispositions in security were taken in the name of the trustees, who were infeft. *Held* (*per* the Lord President, Lord Mackenzie, and Lord Skerrington) that the son was not entitled to claim legitim out of the bonds and dispositions in security, because if his mother was not the creditor therein the Titles to Land Consolidation Act 1868, section 117, did not apply, and the bonds were heritable at common law, but if his mother was creditor in the bonds, then in terms of section 117 they were not moveable for the purpose of legitim.

The Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. cap. 101) enacts, section 117—"From and after the commencement of this Act no heritable security granted or obtained either before or after that date shall, in whatever terms the same may be conceived, except in the cases hereinafter provided, be heritable as regards the succession of the creditor in such security, and the same, except as hereinafter provided, shall be moveable as regards the succession of such creditor, and shall belong after the death of such creditor to his executors or representatives *in mobilibus* in the same manner and to the same extent and effect as such security would, under the law and practice now in force, have belonged to the heirs of such creditor . . . provided that where legitim is claimed on the death of the creditor no heritable security shall to any extent be held to be part of the creditor's moveable estate in computing the amount of the legitim."

Wilson Rowan Meikle and others, testamentary trustees of the deceased Mrs Margaret Ashmore Kyle or Wingate, widow of Andrew Wingate, engineer and shipbuilder, Whiteinch, *pursuers*, brought an action against Ashmore Kyle Paterson Wingate, only child of the said Mrs Wingate, *defender*, concluding for decree of declarator "that the amount of the legitim payable to the defender out of the trust estate in the hands of the pursuers is £1456, 17s. 8d., and that on payment of this sum by the pursuers to defender with interest at the rate of 3 per cent. from the date of death of the said Mrs Margaret Ashmore Kyle or Wingate, or consignation thereof in bank in name of defender, or otherwise as to our said Lords shall seem proper, the pursuers are entitled to be discharged of the defender's claim for legitim; and the defender ought and should be decerned and ordained, on payment to him of the said sum of £1456, 17s. 8d. with interest as aforesaid or consignation thereof in bank in his name or in such other manner as our said Lords shall order, to grant to the pursuers a full and complete discharge in common form exonerating them from his claim for legitim from the said trust estate, and in the event of the defender failing or refusing to grant said discharge remit should be made to the Clerk of Court or such other person as our said Lords may appoint to grant a discharge exonerating the pursuers upon consignation as aforesaid being made."

The pursuers *pleaded*—"1. The amount of legitim due to defender being as stated in the summons, decree should be pronounced in terms of the declaratory conclusions of the summons."

The defender pleaded—"*Separatim*—4. In the event of the Court holding that the defender has elected to take his legal rights, the amount of legitim due to the defender includes, in the circumstances, one-half of the portion of his share of Thomas Wingate's trust funds assigned to his mother in respect that no allocation of the securities of which that share consisted was made or consented to by him, and the defender should accordingly be assoilzied."

The *facts* of the case are given in the opinion (*infra*) of the Lord Ordinary (CULLEN), who on 23rd November 1916 pronounced this interlocutor—"Finds that in ascertaining the amount of legitim payable to the defender from the estate of his deceased mother, there does not fall to be taken into account Mrs Wingate's right and interest in the bonds and dispositions in security, and