

think that while a case of this kind is before the Lord Ordinary the control of the matter of expenses is altogether with him. The defender appears to have obtained an award of £15 from the Lord Ordinary. If that was not sufficient there was no reason why she should not have repeated her motion to the Lord Ordinary, and if he had thought right he would have granted a further award. That there is a reclaiming-note makes no difference in my view. The whole interlocutor of the Lord Ordinary is under review, and until that is disposed of we cannot touch the question of Outer House expenses. The only question, as I said before, is what award of expenses should be made now to enable the wife to conduct her cause before us. If she had had to print the proof then the sum to be awarded might have been different. But the whole of that expense falls on the unsuccessful party. All that the wife requires to do is to instruct counsel to state her case to the Court, and I agree that, that being so, an award of £20 is quite sufficient.

LORD M'LAREN concurred,

LORD KINNEAR—I concur with your Lordships, and would only add that I agree with all that Lord Adam has said with reference to the practice and the conditions under which a wife may have an award for her estimated expenses while a litigation is going on.

The Court awarded £20 of interim expenses.

Counsel for the Pursuer—Hunter—T. B. Morison. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender—Dundas, K.C.—Christie. Agents—R. & R. Denholm & Kerr, W.S.

Tuesday, January, 27.

FIRST DIVISION.

[Lord Low, Ordinary.]

SMITH v. HERITORS OF PRESTONPANS.

Church—Parish—Obligations of Heritors—Minister's Water-Rates.

The heritors of a parish are not bound to relieve the minister of water rates imposed upon him by the local authority in consequence of the manse having been included in a special water-supply district.

On 2nd October 1899 a resolution was adopted by the Western District Committee of the County Council of Haddington, acting as the local authority within the Western District of Haddingtonshire under the Public Health (Scotland) Act 1897, to form into a special water supply district, under section 131 of the Public Health (Scotland) Act 1897, certain parts of the parishes of Prestonpans and Tranent.

On appeal this resolution was confirmed by the Sheriff.

Part of the subjects included in the said special water supply district was the manse, garden, glebe, and offices of Prestonpans. Rates were accordingly levied on the minister of Prestonpans, the Rev. G. S. Smith, who was entered in the valuation roll as liferent proprietor of the said subjects.

Mr Smith thereafter brought the present action against the heritors of the parish of Prestonpans. The conclusions of the action were—"Therefore it ought and should be found and declared by decree of the Lords of our Council and Session that the defenders as heritors foresaid are bound to supply the manse and offices of Prestonpans occupied by the pursuer with a proper supply of water suitable for drinking and domestic purposes, and that they are bound to free and relieve the pursuer of the public water rates and assessments levied upon him as owner and occupier of the said manse and offices; and the defenders ought and should be decerned and ordained by decree foresaid to make payment to the pursuer of the sum of 17s. 7d. sterling, being the amount paid by the pursuer in name of said rates and assessments, and also of such sum as he may pay at any future date in name of said rates and assessments."

In his condescendence the pursuer narrated the creation of the special water supply district, and explained the existing state of the manse water supply, pending the completion of the water supply by the local authority. Prior to 1889 the manse had been supplied by a well, but in that year the heritors had arranged with the Burgh Commissioners of Prestonpans for a supply of water from the burgh pipe to the manse, which is outside the burgh.

The pursuer pleaded—"(1) The defenders being bound to provide the pursuer with a suitable and sufficient supply of water for the manse and offices free of charge, decree ought to be pronounced in terms of the declaratory conclusions of the summons. (2) The defenders being in the circumstances liable to relieve the pursuer of water rates and assessments, decree ought to be pronounced in terms of the petitory conclusion of the summons.

The defenders pleaded—"(1) The pursuer has no title to sue the defenders for relief of assessments. (2) *Quoad ultra* the action is incompetent. (3) The pursuer's statements are irrelevant and insufficient to support the conclusions of the action. (4) The defenders not being bound in the circumstances to furnish the pursuer with any further or other supplies of water than the private supply which he has at present and the public supply which will shortly be available for him, should be assolizied from the declaratory conclusion relating to the supply of water. (5) The defenders not being bound to relieve the pursuer of assessments imposed on him under the Public Health Act, should also be assolizied from the other conclusions of the summons, with expenses."

On 17th July 1902 the Lord Ordinary (Low) pronounced an interlocutor, by which he sustained the first and second pleas-in-law for the defenders, and dismissed the action.

Opinion.—"I think that the only question which is raised in this case is whether the heritors of the parish of Prestonpans are bound to relieve the minister of the parish of public water rates, and I take it that the declaratory conclusion that they, 'as heritors foresaid are bound to supply the manse and offices occupied by the pursuer with a proper supply of water suitable for drinking and domestic purposes,' is introduced simply in order to lead up to that question, the proposition being that as heritors they are bound to furnish the manse with a proper water supply, and that therefore they are bound to relieve the minister of these rates.

"Now the minister is liable for the assessment as owner and occupier of lands and heritages within the district, and he is bound to pay the assessment whether he uses the water supply or not, because it is laid upon the owners and occupiers of lands and heritages within the district, irrespective of the use they make of the water supply which the assessment is imposed to provide.

"It is not disputed that the heritors of the parish are under obligation to see that the minister has a reasonable supply of water, and of course if there is a public water supply in the neighbourhood the obvious way of their implementing that obligation is to introduce the public water supply into the manse. The fact, however, that they may discharge their obligation at little cost by utilising the public water supply seems to me to be no reason why they should relieve the minister of rates, which he is bound to pay as owner and occupier of lands and heritages in the district along with other owners and occupiers of lands there. I do not think the two matters are connected at all. So I shall sustain the first and second pleas-in-law for the defenders, and dismiss the action with expenses."

The pursuer reclaimed, and argued that as the heritors were bound to supply water to the manse, they were bound to pay the rates when they were relieved of that obligation by the formation of a special water supply district.

Counsel for the respondents were not called upon.

LORD PRESIDENT.—The pursuer is minister of the parish of Prestonpans, and as such he is the liferent proprietor of the manse, offices, and glebe. In 1899 the part of the parish in which these are situated was formed into a special water supply district with the usual incidents of the proprietors and occupiers of property within it being liable to pay water rates. The pursuer therefore has no answer to the claim of the rating authority for these rates, and the question comes to be whether he has shown any grounds for his claim against the heritors for relief of the rates

so paid. The argument was that the heritors are bound to see that a parish minister receives a reasonable supply of water for his manse and offices, and this is true, but they are entitled to fulfil that obligation in the way least onerous for themselves; as, for example, by making for him a connection with a public water supply in the neighbourhood. But taking all this to be so, it does not follow that the heritors are bound to relieve him of rates which he was bound by the public law of the country to pay as the liferent owner and occupier of the manse, offices, and glebe. The claim is an entire *non sequitur*, and I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD KINNEAR.—I agree with your Lordship on the grounds stated by the Lord Ordinary. I think there is no logical connection between the two propositions which constitute the pursuer's plea that the defenders are bound to find him a sufficient supply of water, and therefore that they ought to be found liable to relieve him of the water rates. I could have understood the case if, assuming the obligation of the heritors to be to supply water to the manse, which is not in question, the pursuer could have said that the liability for payment of the rates had been imposed upon him in consequence of the defenders' failure to implement that obligation. If that had been the case a claim for reparation by way of damages or for breach of contract might have been at least intelligible. Whether the form of redress would have been relief from the rates I do not know. But it is certain, and it was conceded, that the rates were not imposed upon the pursuer in consequence of any failure on the part of the heritors, but because water had been introduced into the district for the public benefit, and whether the pursuer uses the water or not he is bound to pay the water rate. His liability to pay is altogether independent of any right he may have against the heritors, and is also independent of any satisfaction or dissatisfaction which he may entertain as to the water which may be supplied by the local authority.

The minister's liability for rates has nothing whatever to do with any legal relation between him and the heritors, and there is no more reason why he should throw his burden upon them than upon any other inhabitant of the parish.

LORD ADAM and LORD M'LAREN concurred.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Jameson, K.C.—Hunter. Agents—Macpherson & Mackay, W.S.

Counsel for the Defenders and Respondents—C. N. Johnston, K.C.—Munro. Agents—Mackenzie, Innes, & Logan, W.S.