

pensation until the balance of expenses due to them had been paid, and payment has not been made since that date. A sum of 10s. 8d. a week from 30th October 1903 to 31st March 1904 would amount to £11, 13s. 2d., and that sum has been consigned with the Accountant of Court. At that date M'Vicar charged the Rosewell Company for payment of £11, 13s. 2d., and the Rosewell Company presented this note of suspension.

“Two points were argued for the complainers the Rosewell Company—(1) That the charge was incompetent, because it bore to be given under pain of imprisonment, whereas it was maintained imprisonment for debt was abolished by the Debtors Act (43 and 44 Vict. c. 34) with certain exceptions, including alimentary debts; and by the Act 45 and 46 Vict. c. 42, sec. 4, imprisonment for alimentary debts was also abolished except in the special cases specified; (2) because the complainers were not due the sum charged for.

“As to the first objection, it may be that the charge was blundered, having regard to the fact that the complainers are a company, and also to the Act 45 and 46 Vict. c. 42, sec. 4, and that there is only power to imprison for an alimentary debt when the conditions specified in that section exist.—See *Whiteford v. Gibson*, 9th December 1899, 7 S.L.T. No. 233. But the point is of no general consequence. As at present advised I would not be prepared to sustain it; but as it is not embraced in the complainers' pleas I do not think it necessary to deal with it.

“The other point is of more consequence and of general application. It raises this question under the Workmen's Compensation Act—whether, when a workman has obtained an award an action to recover the amount awarded can be met by a decree against him held by his employers when it is a decree for expenses awarded in the course of the proceedings for compensation.

“I think this point is determined by the 14th article of the First Schedule of the Act, which provides expressly that ‘a weekly payment or a sum paid by way of redemption thereof shall not be capable of being assigned, charged, or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.’

“I think that the last words of this article cannot be got over. They seem unambiguous, and to meet the case precisely. I do not say whether the Sheriff-Substitute could or could not have framed his allowance of expenses in such a way as to make them a deduction from the compensation. I do not see that he could. At all events he has not done so, although I am informed he was asked to do so. The reasons of suspension must therefore be dismissed.”

Of the same date the Lord Ordinary pronounced the following interlocutor:—
“Finds, in respect of the 14th article of Schedule I of the Workmen's Compensation Act 1897, that the complainers' claim for expenses cannot be set off against the weekly payment found due by them to the respondent: Therefore repels the com-

plainers' objections to the charge by the respondent: Refuses the prayer of the note, and decerns: Finds the respondent entitled to expenses, of which he allows an account to be given in, and remits the same when lodged to the Auditor of Court to tax and to report.”

The complainers reclaimed, arguing that they could set off their claim for expenses against the weekly payment due by them. Reference was made to the First Schedule, section 14, the Second Schedule, section 12, and section 1 (4), of the Workmen's Compensation Act 1897. The first point mentioned by the Lord Ordinary in his note was not argued.

Counsel for the respondent was not called upon.

LORD JUSTICE-CLERK—I am very clearly of opinion that the judgment reclaimed against is right.

The object of the Act is to secure that an injured workman shall have for his subsistence the sum awarded to him, and that it is not to be trencned upon in any way. This is made perfectly clear by section 14 of the First Schedule.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Reclaimers—Hunter—Thomson. Agents—W. & J. Burness.

Counsel for the Respondent—Wilton. Agent—P. R. M'Laren, Solicitor.

Friday, December 16.

SECOND DIVISION.

[Lord Low, Ordinary.]

MAXTONE v. THE PROVOST, MAGISTRATES, AND COUNCILLORS OF DUNOON.

Local Government—Burgh—Burgh not Returning Member to Parliament—Making up Municipal Register—County Assessor on whom Duty Imposed not Entitled to Remuneration—Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), secs. 26 and 67

The Town Councils (Scotland) Act 1900 provides (section 26) that the municipal register of burghs not returning members to Parliament shall be made up by the assessor for the county within which the burgh is situated, and (section 67) that the whole expense of making-up and printing the municipal register shall be defrayed by the burgh.

Held that the assessor is not entitled to remuneration from the burgh for his personal services, but only to payment of the necessary outlays which he has made.

The Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), section 26, enacts—
“In every burgh not returning or contri-

buting to return a member or members to Parliament, the assessor for the county or counties or districts thereof within which the burgh is situated shall on or before the fifteenth day of September in each year prepare an excerpt from the list of voters for parliamentary purposes for such county, containing the names of all persons appearing thereon in respect of premises within the municipal boundary, and the municipal register shall consist of (1) the said excerpt; (2) the supplementary list." Section 67—"The whole expense of making up and printing the municipal register and in connection with the election of councillors and magistrates shall be defrayed either from the common good of the burgh, the assessment imposed or levied in the burgh under the provisions of the Registration Acts, or any assessment levied under the Burgh Police (Scotland) Act 1892, or any local Act, all as the council may determine, and the said expenses may be divided and apportioned among the said common good and assessments as the council think proper."

David Murray Maxtone, Assessor for the County of Argyll, in January 1904 brought this action against the Provost, Magistrates, and Councillors of the burgh of Dunoon for the sum of £57, 7s. 4d., comprising (1) remuneration for work done by him in making up the municipal register of the burgh of Dunoon (a burgh falling under section 26 of the Town Councils (Scotland) Act 1900) for the years 1902-1903 and 1903-1904; (2) outlays made by him in connection with the work.

He pleaded—"The pursuer having performed the services and made the outlays referred to, and the defenders being due and indebted to him in the amount of the reasonable charges for said services and the amount of said outlays, decree as concluded for ought to be pronounced.

The defenders pleaded, *inter alia*—" (4) The pursuer being bound under the said Town Councils Act to perform the duties for which he claims payment, and his services being covered by his salary as county assessor, and there being no obligation imposed on police burghs to pay him any special fee therefor, the defenders should be assolized. (5) The pursuer not having a contract with the defenders, and not being entitled to demand remuneration or recover outlays from them, the defenders should be assolized, with expenses."

The Lord Ordinary (Low) on 2nd August 1904 pronounced the following interlocutor:—"Finds that the defenders are not bound to remunerate the pursuer for his services in making up the municipal register of the burgh of Dunoon, but that they are bound to repay to him the necessary and proper expenses which he has incurred in making up the said register: With these findings appoints the cause to be enrolled for further procedure, reserves the question of expenses, and grants leave to reclaim."

Opinion.—"By the Town Councils (Scotland) Act 1900 certain duties are laid upon the assessor for the county in which a burgh not returning a member to Parliament is situated, in regard to making up

a municipal register of voters. By the 67th section of the Act it is provided that 'the whole expense of making up and printing the municipal register, and in connection with the election of councillors and magistrates,' shall be defrayed out of the common good, or out of certain assessments, or shall be apportioned between them. There is nothing said in the Act as to the remuneration of the assessor for his labour and trouble in making up the register.

"The pursuer is assessor for the county of Argyll, and the defenders are the Town Council of the burgh of Dunoon, which is a police burgh situated in that county. The pursuer has as assessor for the county performed the duties, in the way of making up the municipal register of Dunoon, imposed upon him by the Act, and he now sues the defenders for remuneration for his services and for payment of certain outlays incurred by him.

"In regard to the outlays, assuming that they have been properly and necessarily incurred, I do not think that there can be any doubt that they fall, in terms of the 67th section, to be paid out of the common good or the assessments referred to in the section, and as the defenders have the administration and control of the common good and the assessments I think that the pursuer is entitled to sue them for payment of outlays which he has made on their behalf in the performance of his statutory duty.

"The question of remuneration, however, is in a different position. The pursuer did the work because it was imposed upon him by statute, and not because he was employed by the defenders to do it. The pursuer, therefore, cannot claim remuneration from the defenders on the ground of contract. Nor, in my opinion, is there any statutory obligation laid upon the defenders to remunerate the pursuer for his services. The statute imposes the duty of making up the municipal register upon the county assessor, but says nothing whatever about his remuneration, and I think that it is impossible to read into the Act by implication a provision that he shall be remunerated for his labour in making up the register by the magistrates of the burgh.

"The pursuer founds upon the 67th section, but I do not think that its provisions aid him. What the section deals with is the 'expense' of making up the register, and I do not see how remuneration to the assessor can possibly be included in the expression 'expense' unless some one is under a legal obligation to pay such remuneration. But the defenders (with whom alone this case is concerned) are, as I have shown, under no obligation, either statutory or contractual, to remunerate the pursuer.

"I may add that I am confirmed in the view which I have expressed by comparing the Act of 1900 with other Acts whereby similar duties have been laid on assessors. Thus by the Registration of Voters (Scotland) Act of 1856 the assessors in burghs are directed to make up registers, and it is provided (section 43) that after the com-

pletion of each annual register the magistrates shall fix the amount of the costs and expenses thereof, 'including therein any remuneration to assessors which they may deem proper.' Similar provisions are contained in the County Voters (Scotland) Act 1861. I think that those Acts show that when the Legislature intended assessors to be remunerated for such work express provision was made to that effect, and that when in the Act of 1900 no provision was made for remuneration it was because it was not intended that the assessor should receive any additional remuneration beyond his salary as county assessor.

"I may also refer to the English cases of *Jones v. Mayor of Carmarthen*, 1841, 8 M. & W. 605, and *Queen v. Governors of the Poor of Hull*, May 7, 1853, 2 Ellis & Blackburn 182."

The pursuer reclaimed, and argued—He was entitled not only to outlays but also to reasonable remuneration for his services. That was the natural interpretation of section 67 of the Town Councils (Scotland) Act 1900, which imposed upon the burgh "the whole expense" of making up the register. His fee was a necessary part of the expense. The fact that it was not expressly stated to be so was immaterial, and corresponded with what was found in other similar Acts, e.g., the Lands Valuation (Scotland) Act 1854, sec. 18, and the Local Government (Scotland) Act 1889, sec. 28 (5), where it was only by implication that the assessor's remuneration was included in "expenses"—*County Council of Lanarkshire v. Lord Advocate*, March 15, 1892, 19 R. 617, 29 S.L.R. 497. Further, the Registration of Voters (Scotland) Act 1856, sec. 43, and the County Voters (Scotland) Act 1861, sec. 41, expressly included in "expenses" remuneration to assessors, and thereby indicated the general intention of the Legislature in cases of this class. Moreover, the effect of section 29 of the Town Councils Act of 1900 was to incorporate into that Act the express provisions of section 43 of the Act of 1856 and section 41 of the Act of 1861. The present was not the case of the statutory servant of a body with a fixed salary having to do extra work for that body without further remuneration, but of an outsider doing work gratuitously for a body with which he was unconnected. He was the servant of the County Council, and the County Council could only remunerate him for county not for burgh work—Local Government (Scotland) Act 1889, sec. 83 (3). This and the fact that they were upon different statutes differentiated the present case from those of *Jones v. The Mayor of Carmarthen*, 1841, 8 M. & W. 605, and *Queen v. Governors of the Poor of Kingston-upon-Hull*, 1853, 2 E. & B. 182, founded on by the Lord Ordinary.

Argued for the respondents—The claimer was entitled to his outlays but not to remuneration. The Act of 1900 imposed a duty upon him and was silent as to remuneration; the proper inference was that it was not intended to give him any. This was strengthened, as pointed out by the Lord Ordinary, by the fact that in the

Registration of Voters (Scotland) Act 1856, sec. 43, and the County Voters (Scotland) Act 1861, sec. 41, it was thought necessary to introduce an express provision that in cases covered by these sections "expenses" might, if deemed proper, include remuneration to assessors. The case was ruled by *Jones v. The Mayor of Carmarthen*, *supra*; *Queen v. Governors of the Poor of Kingston-upon-Hull*, *supra*; *The Queen v. Allday*, 1857, 7 E. and B. 799.

LORD JUSTICE-CLERK—The question in this case arises under the Town Councils (Scotland) Act of 1900. By that Act the making up of the register of municipal voters in the smaller burghs, which are not separately represented in Parliament as burghs, is ordered to be performed by the assessor for the county in which any such burgh is situated. The County Assessor of Argyllshire having been required to make up the roll of Dunoon maintains in this action that he is entitled to payment from the burgh for his work in doing so. The claim he divides into two parts—the necessary outlays incurred by him in having the work done, and remuneration to himself for the work done, by him. As regards the first I think that the Lord Ordinary has rightly held that the pursuer's outlays must be paid, and against this finding the defenders do not reclaim. But he has held that there is no ground in law for subjecting the burgh funds in payment of the pursuer's services. My opinion is that he has rightly so held. The pursuer has done the duties for which he now asks payment by appointment of the statute which has laid this work upon him. He is ordained to do it, and the burgh has no choice in the matter, but must allow this public duty to be done by him and by no one else. He can certainly therefore have no claim against the burgh as upon a contract of service. It is therefore only by appeal to the statute that the pursuer can establish any claim to receive remuneration for work in obedience to statutory requirement. Now, I do not find any authority in the statute for compelling the burgh to make such payment. I agree with the Lord Ordinary that section 67 cannot be read as conferring any right upon a county assessor fulfilling this statutory duty to demand payment for the work. "Expenses" incurred is one thing, payment for work is another.

It is certainly consistent, with if not directly confirmatory of this view that in other statutes where new duties have been imposed upon those holding official appointment, and where it was thought right that there should be additional remuneration in respect of them, this was expressly dealt with by statutory enactment.

The decision in the case of *The Queen v. Allday* seems also most apposite. My opinion is that the Lord Ordinary has rightly disposed of the case, and that his interlocutor should be affirmed.

LORD YOUNG concurred.

LORD TRAYNER—I cannot say that the interpretation put by the pursuer on the

clauses of the Act on which he bases his claim is unreasonable. On the contrary, that clause seems to me quite capable of being read as including within "the expense of making up" the municipal register a fair remuneration to the officer who makes it up. But the considerations against that view stated by the Lord Ordinary are at least as strong against the pursuer's contention as anything which occurs to me in favour of it. I cannot therefore say that I think the Lord Ordinary's interlocutor wrong, but I assent to the judgment now proposed with some hesitation.

LORD MONCREIFF—Although this may be rather a hard case for the pursuer, I am not prepared to differ from the Lord Ordinary. The pursuer's claim depends entirely upon whether the words in the 67th section of The Town Councils (Scotland) Act 1900, "the whole expense of making up and printing the municipal register," &c., include remuneration to the pursuer, the Assessor for the County of Argyll, for his personal services in making up the municipal register as well as the necessary and proper expenses connected with the making up and printing the register, which admittedly must be defrayed by the burgh of Dunoon.

If this question had arisen for the first time, and we had no guidance from decision or from analogous provisions in other Acts of Parliament, I should have been disposed to hold that the expense of making up the register included suitable remuneration to the person upon whom the duty of making it up was laid by the statute. But the view which the Lord Ordinary has taken, that "expense" does not include remuneration to the pursuer, is confirmed by the decision to which he refers—*The Queen v. Governors of Poor of Hull*, 2 E. & B. 182. It is also confirmed by the provisions of other Acts of Parliament—in particular, the Registration of Voters Act of 1856, sec. 43, which expressly provides for remuneration to assessors and town-clerks respectively connected with the completion of the annual registration, and the corresponding provision in The County Voters (Scotland) Act of 1861, sec. 41.

The case therefore stands thus—The Town Councils Act of 1900, sec. 26, has laid upon the County Assessor the duty of making up the municipal register, and the statute does not provide for any additional remuneration, as distinguished from the outlays, being paid to him for the performance of that duty. The duty thus laid upon the County Assessor does not appear to be very onerous, and many instances could be given in which officials have had extra work laid upon them by statute of a much more onerous description, in respect of which no additional remuneration is given.

I am far from saying that the imposition of this extra work upon the county assessor may not furnish him with a good reason for asking the County Council to increase his salary; but that is a matter for arrangement between the County Council and the assessor.

The Court adhered.

Counsel for the Reclaimer—Campbell, K.C.—Graham Stewart. Agents—M'Neill & Sime, S.S.C.

Counsel for the Respondents—W. C. Smith, K.C.—Adamson. Agents—W. & J. L. Officer, W.S.

Friday, December 16.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

HOULDSWORTH v. HOULDSWORTH.

Trust—Lapse—Reversion to Donor—Disposition of Site to Trustees for School—Failure of School—Declarator that Site had Reverted—School Sites Act 1841 (4 and 5 Vict. c. 38), sec. 2—Title of School Board and Parents to Oppose.

A in 1858 feued to B a portion of ground "to be possessed and applied" as a site for a school for the poorer children of the parish, and for a schoolmaster's house. The feu-charter contained no clause of irritancy. B, upon a narrative that he did so under "The School Sites Act 1841," disposed the ground to trustees for the purposes above mentioned. The disposition contained no clause providing for the contingency of the failure of the trust purposes. A school was built and carried on by the trustees until 1903, when owing to lack of funds it was closed. In an action by the heir of A and others, directed against the trustees for declarator that the site had reverted to the heir of A, the trustees did not appear, but minutes of compareance and defences were lodged by the School Board and certain parents of poorer children of the parish.

Held (1) that the former had not, but the latter had, a good title to defend the action (*diss.* Lord Young, who was of opinion that neither had); (2) that the site had reverted to A's heir (*per* Lord Trayner and Lord Moncreiff) under sec. 2 of the School Sites Act 1841—(*per* Lord Young) at common law owing to the failure of the trust purposes.

Section 2 of the Schools Sites Act 1841 (4 and 5 Vict. c. 38) is as follows:—"Any person, being seised in fee-simple, fee-tail, or for life, of and in any manor or lands of freehold, copyhold, or customary tenure, and having the beneficial interest therein, or in Scotland being the proprietor in fee-simple or under entail and in possession for the time being, may grant, convey, or enfranchise by way of gift, sale, or exchange, in fee-simple or for a term of years, any quantity not exceeding one acre of such land, as a site for a school for the education of poor persons, or for the residence of the schoolmaster or schoolmistress, or otherwise for the purposes of the education of such poor persons in religious and useful knowledge: Provided