

Wednesday, March 9.

FIRST DIVISION.

WALTER v. CULBERTSON.

Parent and Child—Custody—Illegitimate Child—Right of Mother to Custody—Custody of Children Act 1891 (54 and 55 Vict. cap. 3), secs. 1 and 3.

A petition by a mother for the custody of her illegitimate child, a boy of ten, was opposed by the person in whose custody she had placed the child more than nine years before. The petitioner prior to 1914 was employed as a maid-servant in various hotels in this country, and shortly after the birth of her child in 1910 she placed it in the care of the respondent, the father of the child being the respondent's illegitimate son. In the end of 1914 the petitioner, being unable to find employment, went to Australia, where she married. Her husband having lost his life in the war she returned to Scotland in 1920, and claimed the custody of her child from the respondent, her intention being to return with the child to Australia, where she proposed to enter service again, or to start a lodging-house, her means having been supplemented by a war pension of £1 a week in respect of her deceased husband's service. No complaint was made of the way in which the child had been looked after by the respondent, nor on the other hand was there evidence that the petitioner had in any way abandoned or deserted her child, or had been unmindful of her parental duties, she having from time to time contributed substantial sums towards its support. The Court (*diss.* Lord Skerrington, who was in favour of granting the prayer *de plano*) continued the petition in order that the petitioner might satisfy the Court that she was able to make effectual plans for the child's welfare. Thereafter on the petitioner showing that she was in a position to do so, the Court granted the application, Lord Skerrington agreeing that the petitioner was entitled to the custody of her child, but dissenting from the grounds on which the judgment was pronounced.

Mrs Elizabeth Gow or Walter, residing at 127 Lothian Road, Edinburgh, widow of James Walter, farmer, Victoria, Australia, presented a petition for the custody of her illegitimate child Rudolph George Collier Gow, aged ten years.

Answers were lodged for Mrs Elizabeth Collier or Culbertson and George Culbertson, her husband. The petitioner lodged replies to those answers, and on 20th July 1920 the Court remitted to Lord Kinross, advocate, to inquire into the facts and to report.

The circumstances of the case sufficiently appear from the opinions (*infra*) of their Lordships.

Counsel were heard on 9th February 1921.

Argued for petitioner—The law was quite settled that a mother had the right to the

custody of her illegitimate pupil child—*Sutherland v. Taylor*, 15 R. 224, 25 S.L.R. 189. The petitioner had never deserted the child. On the contrary, she had all along contributed to his support. She was now in a position to provide him with a suitable home. It was in the best interests of the child that he should be under his mother's care.

Argued for respondent—The welfare of the child was the leading consideration both at common law and under the statute—Custody of Children Act 1891, sec. 3; *Campbell v. Croall*, July 6, 1895, 22 R. 869, 32 S.L.R. 655. There was no proof that the petitioner was in a position to give her child a suitable home. The child was being well cared for, and was happy and contented where he was. The case of *Mitchell v. Wright*, March 14, 1905, 7 F. 568, 42 S.L.R. 429, was also referred to.

At advising—

LORD PRESIDENT—This is a petition by the mother of an illegitimate child for the delivery of the child into her custody. She has the only true legal title to the custody of the child. "*Prima facie*," as Lord President Inglis put it in *Sutherland v. Taylor* (15 R. 224, at p. 227), "everything is in favour of the petitioner's claim. But in questions relating to the custody of children there are other considerations which the Court must keep in view beyond the question of the mere legal title to the custody. The Court have always considered as of paramount importance the interests of the child itself, particularly in regard to its health, its future prospects, and its moral education."

The circumstances are these. The petitioner was until 1914 employed as a maid-servant in various hotels in this country. She gave birth to an illegitimate child (a boy), who is the subject of the present application, in 1910. The father was the illegitimate son of the female respondent. In 1912 the petitioner gave birth to a second illegitimate child by a different father. Finding employment difficult to obtain after the outbreak of war, she went to Australia and obtained employment in situations similar to those in which she had been in this country until 1916, when she married. Her husband lost his life in the war the next year. Thereafter she became a maidservant in an Agricultural College in Victoria. She came back to this country in 1920, and for the last four months she has been a day worker in the service room of a restaurant in this city, sleeping out in a hired room. The reporter informs us that she has given satisfaction to her employers, and he is impressed with her strong and capable character. Owing to her circumstances and vocation she has never, unless during the brief episode of her married life, been in the position of having any home of her own in which her children could be brought up, or, indeed, of personally mothering them at all. The younger was provided for by adoption. The elder, with whose custody we are at present concerned, was a few months after his birth placed in the care of the female respondent. With her the child has uninterruptedly

remained for ten years until now. During that period the petitioner has from time to time contributed to his support sums which if averaged probably approximate 5s. weekly, and has provided some clothing. Meanwhile the child has been brought up by the respondent in family with her husband and their three children. The reporter has formed the opinion that mutual attachment exists between the child and the respondent; and the child's medical attendant states that while organically sound the child is delicate and requires careful looking after, and that as regards the effect of any change in his domestic circumstances everything would depend on what alternative life was proposed for him.

At the present date the petitioner is in no better position to give the child the advantages of maternal care personally or in a home of her own than she has been any time these ten years, although she has been since 1917 better able in a pecuniary sense to provide for her child otherwise if she so desires—her weekly earnings having been supplemented by a war pension payable to her in respect of her late husband's service. No complaint is made of the way in which the female respondent has looked after the welfare of her grandchild, or of the comfort and suitability of the domestic surroundings in which he has been reared and which he still enjoys, and it is not suggested that he would be better cared for by any third party. The reporter has formed the opinion that the mother and the grandmother have fallen out in connection with the child, and there are statements made on both sides in the pleadings, partly true and partly untrue, which support that opinion. The petitioner explains as her only reason for interfering with the child's present and not unfavourable position in his grandmother's family home that she is minded to take him to Australia, where she intends to enter service again or to start a lodging-house. In the meantime how the petitioner, situated and employed as she is, is to give the child her own personal care and supervision is not explained. The case is not one to which the Custody of Children Act 1891 has any application, but it contrasts with such cases as *Kerrigan v. Hall* (1901, 4 F. 10), in which the mother having married is able with the consent of her husband to receive her illegitimate offspring into a home of her own.

The value of maternal ministrations can easily outweigh many other considerations, but the conditions indispensable to the performance of them by the petitioner in person are not realised at the present time, and the realisation of them in the near future is, to say the least, problematical. Further, as I have already pointed out, the case is not one in which any adverse criticism can be made on the grandmother's care of the child justifying a proposal to entrust him preferably to some third party. Nor is anything of that kind proposed or suggested. The only question is whether the child should be delivered to the petitioner herself in the circumstances disclosed. I do not think I should be justified in acting on assumptions or speculations in such a matter. Each case

of this kind must be disposed of on its own particular circumstances. In the circumstances of this case as these have been presented to us my opinion is that the interests of the child require that he should be allowed to remain with his grandmother.

There is a suggestion in the case that before the petition was presented some obstacles were made to the petitioner's access to the child. It must be clearly understood that she is entitled to access while she is in Scotland. I think the best course would be to allow an interval to elapse before finally refusing the petition. Meantime, if, as I hope will not prove to be the case, difficulties about access should arise, or—in the possible contingency of the petitioner being in a position to make more definite proposals with regard to her plans in the event of the child being made over to her—application can be made.

LORD MACKENZIE—In this case I take the view that it would not be for the benefit of the child to grant the petition. The petitioner ought, however, to remain in Court in order that the petitioner may, if she desires, put before us in a definite shape what arrangements she would be able to make if the child were handed over to her care. The petitioner must, of course, in the meantime be allowed access to her child.

LORD SKERRINGTON—This case is important because it raises a general question as to the manner in which the law with reference to the right of a mother to the custody of her illegitimate pupil child ought to be administered and enforced. The law itself is clear and well defined. An unmarried mother has a legal right and title, and indeed the only legal right and title, to the custody and control of her pupil child—*Sutherland v. Taylor*, 15 R. 224. It follows that “in all ordinary circumstances” the mother's right “must be enforced” (*per Lord President Inglis in Macpherson v. Leishman*, 1887, 14 R. 780, at p. 782), and that “an application by the mother of an illegitimate child for delivery of it to her custody is *prima facie* a just and legal demand, as she has the only legal title to its custody” (*per Lord President Inglis in Brand v. Shaw*, 15 R. 449, at p. 453). The right of a father to the custody and control of his legitimate pupil child could not be defined in higher or broader terms, and in the latest and most authoritative statement on the subject Lord Kinneir assimilated the two rights as follows—“The mere fact that the child is illegitimate does not import misconduct preventing the petitioner from having its custody, because the rule of law is that the mother of an illegitimate child has the same rights and duties towards it as the father of a child born in wedlock”—*Kerrigan v. Hall*, 4 F. 10, at p. 17. This emphatic declaration of the nature and strength of the unmarried mother's right to the custody and control of her pupil child is all the more remarkable seeing that her legal title depends exclusively upon the judicial recognition of her natural right; whereas in the case of a legitimate pupil child the natural right of the father is forti-

fied by the rules of positive law which together constitute the *patria potestas*, and the natural right of the widowed mother is fortified by a statute which makes her the child's tutor either alone or along with the tutors nominated by the father. It is only upon the death of the mother of an illegitimate child that her family rights are found to be of a lower order than those which belong to the father or mother of a legitimate child. Unlike them she cannot appoint a tutor to her child who will possess a *prima facie* right to give directions as to its custody and control during pupilarity; but this legal inferiority is more apparent than real, because her testamentary nominee will, on proper cause shown, obtain the authority of the Court to give effect to her expressed wishes in regard to her child's custody and education after her death—*Brand v. Shaw*, 15 R. 449, 1888, 16 R. 315.

The legal right and title of a parent to the custody and control of his or her pupil child may be lost altogether, or may be lost in part, or may be controlled as regards some particular matter, for reasons which do not depend upon the question whether the child is or is not legitimate. The general principle is that a parent's natural right over his or her child is recognised and enforced primarily because the law considers that it is for the interest of the child that it should be under the control of its natural guardian, and that his or her wishes in regard to its upbringing and education are presumably more for its benefit than any directions which could be given by a stranger. No doubt the law also has in view that this natural arrangement is good for the parent, for the family, and for the community. The benefit of the child is, however, the paramount consideration. Accordingly, although a parent may be beyond reproach both as regards his past behaviour and as regards his good intentions towards his child, the Court may refuse to assist him to do something which it regards as open to grave objection from the point of view of the child's welfare, and at the same time as plainly unreasonable, by which I mean something which no reasonable parent would wish to do in the circumstances. The delicate state of the child's health or the parent's inability to do what is necessary for its welfare may bring a case within this category. While the Court has undoubted jurisdiction in such cases, the exercise of that jurisdiction ought I think to be regarded as exceptional, because it involves an interference with family rights which, unless absolutely and imperatively necessary, may operate injuriously to the child and unjustly to the parent. Wherever there is room for a reasonable difference of opinion the wishes of the parent ought in my judgment to be respected. There is, however, a second category of cases where the interference of the Court is easier and less delicate. The parent's conduct may have been such as to deprive him of any right to be consulted as regards his child's custody and education, or again such as to show that he is unfit to

have it in his own personal custody, or again such as to alter the burden of proof and to impose upon him the duty of satisfying the Court that having regard to the welfare of the child he is a fit person to have its custody. The first and third sections of the Custody of Infants Act 1891 deal with cases which fall within this second category. They do not, I think, alter the common law or introduce any new principle into it, but merely call attention to certain considerations which the Court ought to keep in view in disposing of such cases.

By consent of the parties the facts were investigated by a reporter. From Lord Kinross's report it appears that the respondent has failed to prove the allegation in her answers to the effect that "the case falls under section 3 of the Custody of Children Act 1891." On the contrary, it is proved that the petitioner never either abandoned or deserted her child or allowed it to be brought up at the expense of the respondent under such circumstances as to indicate that she was unmindful of her parental duties. Though the child has been for most of its life in the custody of the respondent, this was due not to any neglect on the part of the mother but to her anxiety that the child should be properly taken care of while she carried on her vocation of a domestic servant. The child was boarded by the petitioner with the respondent, and although the precise amount which she paid under this contract has not been proved, it was in the opinion of the reporter substantial. Further, there is no justification for the statement in the answers to the effect that the petitioner "has shown no desire for or affection towards the child." In addition to what she paid to the respondent in money the petitioner provided the child with clothing which the reporter described as "suitable and serviceable." She also returned to Scotland from Australia because, as she informed the reporter, "she could not get from the respondent a satisfactory account of the welfare of the boy." There is every probability that this statement is accurate, seeing that the respondent's counsel admitted the truth of the petitioner's complaint that shortly after her return to this country the boy was withdrawn from school and was sent to Hamilton by the respondent, who declined to inform the petitioner where he had been taken. This admission was a very damaging one, as there was no reason whatever why the petitioner should be thus separated from her son. It lends colour and support to the statement which the petitioner made to the reporter to the effect that "the respondent in her desire to retain the boy has put him against his mother." In view of what the reporter states as to his interview with Dr Cormack Smith, the respondent's counsel did not maintain that it would be dangerous to the boy's health to remove him from his present home. He emphasised four points, viz.—(1) That as the boy had lived most of his life with the respondent it would be painful for him to be separated from her and to be placed in the custody of a comparative stranger; (2) that the boy is well

and happy where he is and that he may not be so well and happy elsewhere; (3) that the petitioner proposes to take the boy to Australia and to settle with him in that country; and (4) that whether she goes to Australia or remains in Scotland, she is a working woman, who at present has no home of her own but lives in lodgings, and consequently she may not be able to give the boy the attention which he requires and at present receives from the respondent. These four points, both separately and in combination, seem to me to deserve the careful consideration of any sensible and dutiful parent. No parent worthy of the name would inflict suffering upon his child by removing it from a home where it was well and happy unless he thought that he had a good reason for adopting that course. Nor would he propose to emigrate with the child to a distant colony without having first considered and weighed the disadvantages and dangers necessarily attending upon such a step. There is no reason to suppose that the petitioner has not duly considered all these good but obvious points with a full sense of her responsibility as a mother. She informed the reporter that "she was perfectly confident of her capacity to earn good wages, and said that one of her main reasons for wanting the boy was that she thought she could do better for him than the respondent"; also that "she intends to return to Australia as she thinks prospects are better in that country, and to take daily service or to start a lodging-house of her own, or to take service on a station where she could take the boy with her." Having lived five years in Australia, and having earned good wages in that country (25s. a-week and her keep), the petitioner is in a much better position than we are to judge whether her scheme is or is not a wise one. The fallacy which underlies the argument of the respondent's counsel is in failing to perceive that questions of this kind, or similar questions of equal importance to the welfare of their children, have to be decided by most parents at one time or another. Unless a parent has so conducted himself as to show that he is not to be trusted, the Court has no duty and no right to oust him from his position as the head of the family and to arrogate to itself the right and duty of deciding in what way and in what country he ought to live and maintain his family. All that the Court can properly do in such a case is to act as a critic and to refuse its assistance to a parent who though acting in good faith proposes to do something which in the opinion of the Court no reasonable parent would do in the circumstances. For example, if a woman who had no private income, who had never earned her own living, and who had never been in Australia, conceived a desire to emigrate to that country, and wished for that purpose to remove her child from a home in this country where it was well cared for at the expense of a relative, the Court might take the view that no reasonable parent would approve of such a scheme. Entirely different considerations apply to the case of the petitioner, who has

a pension of a minimum of £1 a week, who resided some years in Australia, who has earned good wages both in that country and also in Scotland, by means of which she has maintained both herself and the child, and who now demands that her child shall be handed back to her by the person whom she has hitherto paid to maintain it. What right have we who know nothing of the conditions of life in Australia to assume that if she takes daily service in that country she will not be able to give proper attention to her boy, or that her idea of "starting a lodging-house of her own" or "taking service on a station where she could take the boy with her" is impracticable or unduly sanguine?

If the petitioner should change her mind, as she is perfectly entitled to do, and should elect to remain in Scotland, I agree with the reporter that there is no "reason why as a daily servant she should not be able to give the attention necessary to the welfare of a boy of ten years of age." The petitioner might require in that case to arrange with her employer so as to enable her to be absent at certain hours, and this might entail some expense in providing a substitute. On that assumption I see nothing unreasonable in her demand that her child shall now be restored to her—having regard to her pension and to her present wages (£1 a week and her food).

Even if it were clear, which it is not, that to grant the prayer of the petition would subject the boy to some temporary disadvantage, I think that a parent who wished to act reasonably and dutifully towards his child would attach weight to the consideration that the present arrangement for its custody, though beneficial in certain respects, may if continued result in a permanent separation between a mother and her child. A parent is at a disadvantage when visiting a child who resides in a hostile household, and the usual result in such cases is that the child on attaining puberty elects to remain with the persons who have had charge of it. Though the respondent is fond of the boy and has doubtless been kind to him, she has nevertheless proved herself not only unfaithful to the trust which the petitioner reposed in her, but also ready to injure the boy in order to gratify her own selfish affection. She has deliberately tried to create a breach between the boy and his mother. Her counsel stated on her behalf that she would act differently in the future, but it is for the petitioner, who knows the respondent and has suffered from her past conduct, to judge whether such an assurance has any value. Even although the petitioner had not been in a position to take the child into her own personal custody, and if the choice had therefore been between the respondent and some other suitable custodian to be selected and paid by the petitioner, I should have thought that she might reasonably consider that the time had come to sever a connection which the respondent had abused.

For these reasons I am of opinion that the respondent has failed to show any justification for our interfering with the legal right

of the petitioner to the custody of her child. We might with equal propriety require any respectable widower to demonstrate that the arrangements which he had made for the care of his young family are such as would be approved of by the Court in the case of a child who had no legal or natural guardian but who was in the words of the Lord President "in reality a ward of this Court," like the orphan in the case of *Brand* already cited, 16 R. 315, at p. 322. Further, the facts disclosed in the report seem to me to demonstrate that in this case the natural guardian is the better one. On the one side there is the mother, a woman in the prime of life, an active and capable worker with a pension of £1 a week, who is under a legal obligation to maintain the boy, and who wishes to be allowed to fulfil that duty in the best and most natural manner. On the other side there is the respondent, whose illegitimate son was the father of the petitioner's boy. We do not know her age, but she must be considerably older than the petitioner. She has a husband, a grown-up son, and two daughters aged sixteen and twenty-one respectively. The respondent is under no legal obligation to maintain the boy, and her husband and children have the first claim upon her attention; and the petitioner's son has no moral right to be maintained out of the earnings of the respondent's husband. Even if the Court were to regard the matter from a strictly commercial standpoint I should consider the mother in this particular case as a more valuable asset to the boy than the grandmother. Such considerations, however, fade into insignificance when compared with the mischievous consequences which would be the natural and indeed the inevitable result if the Court were unnecessarily to meddle with the family rights and duties of the petitioner and her son.

The respondent's counsel cited the case of *Campbell v. Croall*, 22 R. 869, where a petition by a mother for the removal of her two illegitimate children from a charitable institution was refused. At the time of their admission they were in a state of great destitution, from which their health had suffered. It was an unfavourable circumstance that the petitioner had not contributed to the support of her children in the institution, but the real ground on which the application was refused was her inability to show any reasonable prospect of being able to maintain the children if they were handed over to her. This decision is useful only by way of contrast. Counsel also cited the case of *Mitchell v. Wright*, 7 F. 568. It is unnecessary to refer in detail to the facts of this case, because the decision proceeded on the ground that it fell under section 3 of the Act of 1891 and that the petitioner had failed to discharge the burden of proof imposed on her by that section. The case of *Kerrigan v. Hall*, 4 F. 10, which I have already referred to, was not cited. It resembles the present case in certain respects, and some of the observations of the judges are directly in point. Thus Lord Adam said—"It seems to me that the mother of an illegitimate child is not only entitled to

the custody of it, but that is far better for the child that it should be with its mother unless there is something in the character or conduct of the mother which makes her an unsuitable person to have it."

For reasons which I have already sufficiently indicated I very much regret that your Lordships are not prepared to grant the prayer of the petition *de plano*. On the lowest view of her rights, however, the petitioner is in my judgment entitled to have the petition kept in Court in order that she may with the least possible delay and expense obtain legal protection against any further attempt on the part of the respondent to prevent her enjoying the fullest and most unfettered intercourse with her child, and in order that she may have every facility for satisfying the Court, if so advised, that she is able to make proper provision for its custody either by herself personally or by a deputy.

LORD CULLEN concurred with the majority of the Court.

The Court continued the petition until 1st March 1921.

On 9th March 1921 there was produced in Court on behalf of the petitioner a deposit-receipt for £500 in her name. The petitioner had previously satisfied the Court that she was in right of a pension of £1 per week in respect of the death of her husband.

Counsel for the petitioner and for the respondents were further heard.

At advising—

LORD PRESIDENT—The information which has been laid before us this morning puts a completely different complexion upon this case. It is much to be regretted that the state of the petitioner's means was not disclosed in the petition; and it is difficult to understand why—when the grounds upon which the majority of the Court were disposed to proceed were made known—the petitioner did not at once supplement her averments in the pleadings, and her statements to the reporter, in a way which would have enabled us to appreciate the practical character of her proposal to establish a lodging-house in Australia, and consistently with the execution of that proposal to give personal attention to her boy. However, though late in in the day, that has now been done, and we have therefore to consider what course we are to take in the circumstances as they are now established.

It seems to me that the facts justify us, indeed require us, to grant the petition and order the delivery of the child to the petitioner. It was suggested for the respondent that we might still have to consider whether the proposals which the petitioner makes are not too indefinite to be accepted as a basis for disposing of the petition, and that we should ask the petitioner to state in greater detail the nature of her plans. If the means at her disposal had been less ample, that might have been necessary, but in view of her proved position I think that further precautions of that kind are uncalled for. She is undoubtedly in a position to make effectual plans for herself and her son,

and in these circumstances I think she ought to be allowed to make those plans herself.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I agree with your Lordship that the petitioner is entitled to an order for the delivery of her child into her custody, but I emphatically dissent from the grounds upon which that judgment is to be pronounced. I do not need to express reasons for my dissent, because that sufficiently appeared from the opinion which I formerly delivered.

LORD CULLEN—I agree with the majority of your Lordships.

The Court granted the prayer of the petition.

Counsel for Petitioner—R. M. Mitchell.
Agent—Thomas Crow, Solicitor.

Counsel for Respondents—Burnet. Agent
—James Gray Reid, Solicitor.

Saturday, March 12.

SECOND DIVISION.

[Lord Hunter, Ordinary.

RATRAY AND OTHERS v. CORPORATION OF GLASGOW.

Burgh — Church — Minister — Stipend — Obligation to Provide a Competent and Legal Stipend.

The ministers of three city churches in Glasgow brought separate actions against the Corporation for declarator that the pursuer, as minister serving the cure of the church in question, "was and is entitled to be furnished and provided by the defenders, and that the defenders were and are bound to furnish and provide the pursuer, with a competent and legal stipend suited to the circumstances of the time and the position and duties of the benefice in all time coming during his lifetime and serving the said cure," and for "payment to the pursuer as minister serving the cure of the said church of the sum of £900 sterling per annum as a competent and legal stipend, or such other sum as in the circumstances shall appear to our said Lords to be a competent and legal stipend." In each case the pursuer averred that his stipend had ceased to be a competent and legal stipend, and, founding upon the terms of (1) certain grants of land by the Crown, (2) a charter granted by King Charles I, and (3) a bond granted by the Corporation, and also upon certain actings of the Corporation, pleaded that the defenders were bound to provide him with a competent and legal stipend, which he estimated at £900 sterling per annum. Terms of the deeds founded on and circumstances in which the Court *dismissed* the actions.

Burgh — Church — Minister — Stipend — Obligation to Provide "a Competent and Legal Stipend not under" a Certain Sum without Prejudice to an Augmentation.

In three successive actions of erection brought by the Town Council of Glasgow in the Court of Teinds in 1782, 1818, and 1820 respectively, the Court granted decrees of erection of three city churches. Each of the decrees contained a clause binding the Town Council and community to provide the minister with a stipend, which was described in the earliest of the decrees as "a competent and legal stipend not under 2000 merks" and in the two later decrees as "a competent and legal stipend not under the sum of £400 sterling, without prejudice to the said . . . minister receiving such additional stipend as the pursuers may afterwards think fit to confer." Each of the ministers brought a separate action against the Town Council for declarator that under and by virtue of the decree of erection the pursuer, as minister serving the cure of the church in question, "was and is entitled to be furnished and provided by the defenders, and that the defenders were and are bound to furnish and provide the pursuer, with a competent and legal stipend suited to the circumstances of the time and the position and duties of the benefice in all time coming during his lifetime and serving the said cure," and for "payment to the pursuer as minister serving the cure at the said church and district thereof of the sum of £900 sterling per annum as a competent and legal stipend, or such other sum as in the circumstances shall appear to our said Lords to be a competent and legal stipend," and averred that his stipend had ceased to be a competent and legal stipend. The Court, following *Peters v. Magistrates of Greenock*, 1893, 20 R. (H.L.) 42, 30 S.L.R. 937, granted the decree concluded for.

Burgh — Church — Minister — Stipend — Obligation to Provide "a Competent and Legal Stipend of" a Certain Sum—Obligation to Provide "a Competent and Legal Stipend to the Same Amount as" Certain Other Ministers.

In 1763 in an action of erection brought by the Town Council of Glasgow in the Court of Teinds the Court granted a decree of erection of a city church, which contained a clause binding the Town Council and community to provide the minister with "a competent and legal stipend of 2000 merks." In 1808, in an action of transportation brought by the Town Council in the Court of Teinds, the Court granted a decree of transportation which contained a clause binding the Town Council to provide the minister "with a competent and legal stipend to the same amount as the ministers in the other parish churches in the said city." The minister was at the date of the decree of erection receiving the same stipend as the other city