

justice of the claim by careful and sufficient investigation.

The Lord Ordinary on the Bills, having ordered a record to be made up and closed before answer, appointed the trustee to lodge in process a report "stating generally what is the proof upon which he sustained the claim of the respondent Alex. Simpson." On considering this report the Lord Ordinary pronounced the following interlocutor, which has become final :—

Edinburgh, 19th May 1866.—The Lord Ordinary having heard parties' procurators on the report by the trustee, and considered the closed record and productions, recalls *hoc statu* the deliverance appealed from, and remits to the trustee to allow the respondent to adduce further evidence in support of his claim, and thereafter to proceed thereon as shall seem just: Finds the respondent liable in expenses, and remits the account to the Auditor to tax and report.

(Signed) DAVID MURE.

Counsel for Appellants—Alex. Moncrieff. Agents White-Millar, & Robson, S.S.C.

Counsel for Claimant—J. H. A. Macdonald. Agent—John Thomson, S.S.C.

OUTER HOUSE.

(Before Lord Barcaple.)

LOCALITY OF BARONY PARISH OF GLASGOW.

Locality—Common Agent—Rental. In the election of a common agent in a locality the proven and not the teindable rental of the parish regulates the voting.

At a meeting of the heritors and the agents of the heritors of the Barony Parish of Glasgow, held on the 27th February 1866, for the purpose of naming a person to be suggested to the Lord Ordinary as common agent for conducting the locality of the stipend of the ministers of the first and second charges of the Barony Parish of Glasgow, Mr W. B. Hay, S.S.C., and Mr James M'Knight, W.S., were respectively moved and seconded. A vote having been taken, "the meeting, in consequence of the state and magnitude of the rental, agreed to remit to Mr Logan, the teind clerk, to ascertain which of the two candidates has the majority of votes in the rental, and they further agreed to recommend the said agent to the Lord Ordinary as common agent to conduct the locality." Mr Logan reported to the Lord Ordinary that the rental of the heritors who voted for Mr Hay was £103,814, 11s. 10³/₄d., and the rental of those who voted for Mr M'Knight was £44,081, 16s. 10d. He therefore came to the conclusion that Mr Hay had a majority of votes over Mr M'Knight of £59,732, 15s. of rental.

Mr Logan further reported as follows:—"It has been pressed upon the clerk that in scrutinising the votes he should have only regarded the *teindable rental*, and had the general rental been adjusted before the heritors were held as confessed, in the manner Mr Stirling Crawford adjusted his separate rental, this position would have been quite correct, but as the general body of the heritors allowed a prepared state and scheme of the rental to be reported by the Lord Ordinary to the Court, whereon the augmentation was pleaded and granted, and whereon an *interim* locality of the stipend must be prepared, it is too late to urge the *teindable rental* as the rule of voting for common agent. Moreover, this question has already been settled not only by express decision but by constant practice since a competition arose in 1821 in

the augmentation of the stipend of the parish of St Cuthberts for the common agency, and after minutes of debate, the Court of Teinds pronounced this interlocutor :—

"*Edinburgh, 7th March 1821.*—The Lords having advised the minute for John Ramsay, and the other minute for John Murray, Find that the proven rental whereupon the augmentation proceeded should regulate the election, and remit to Lord Meadowbank to approve of Mr Ramsay's nomination as common agent, and to do otherwise in the locality as he may think proper, and to report.

(Signed) C. HOPE, J.P.D.'

"For the Lord Ordinary's information, the clerk transmits with this report the original papers and interlocutor of Court in the case referred to."

The Lord Ordinary (Barcaple) having considered this report and heard counsel for Mr M'Knight, confirmed Mr Hay as common agent. This was acquiesced in.

Counsel for Mr Hay—John Burnet.

Counsel for Mr M'Knight—David Hall.

HOUSE OF LORDS.

Tuesday, June 12.

HOWDEN v. FLEEMING.

(In Court of Session, 3 Macph. 748.)

Entail—Irritant Clause—Validity—Stat. 1685.

Held that the words "sicklike as if the same had never been made," appended to an irritant clause, were, though not aptly used, unnecessary to the completion of the clause, and not restrictive of it, and therefore that the entail was not ineffectual.

This was an appeal from an interlocutor pronounced by the Second Division of the Court of Session in an action of declarator at the instance of Lady Hawarden, in whose right the respondent now is, against the appellant Mr James Howden, accountant in Edinburgh, trustee upon the sequestrated estate of the Right Honourable John, fourteenth Baron Elphinstone, now deceased, and others. The object of the action was to establish by decree of declarator the validity of certain deeds of entail, and the right of Lady Hawarden, in virtue of them, to the lands of Wigtown, Waterhead, and Cumbernauld. The appellant maintained that the late Baron Elphinstone was proprietor in fee-simple of these lands, which were therefore liable for the payment of his debts. He objects to the deeds of entail on the grounds—first, that the word "made" used in the irritant clause with reference to debts is a *nomen juris*, and applies to debts contracted by deed only; second, that if it has not that limited application the word "concessa" used in a subsequent title had reference to grants by deed only, and that therefore the requirements of the Act of 1685 had not been complied with; third, that the original entail was invalid, inasmuch as the resolute clause did not provide that on a contravention the next heir should have power to make up a title to the lands without representing the contravener.

The deed provides that in case any of the heirs mentioned, other than heirs-male of his body, or of the body of Mr Charles Fleeming, should happen to succeed to the pcentage, they should be bound and obliged immediately to denude themselves of all right, title, and interest to the estate, which should thenceforth *ipso facto* accrue and