As to the town clerk, the present holder of that office had held it for about fifty years, and it was understood that when a vacancy occurred a special application might be made for the appointment of a successor if it was necessary.

Counsel for Petitioners—Mr Cook. Agents—T. & R. Landale, S.S.C.

COURT OF TEINDS.

Wednesday, Jan. 30.

MINISTER OF RENFREW *v.* THE HERITORS.

Declinator. Declinator by a Judge on the ground that he was Lord Rector of a University which was a party to a cause *repelled.*

This was a process of augmentation which was opposed by the University of Glasgow as titular of the teinds of the parish.

The LORD JUSTICE-CLERK propone l a declinator on the ground that he was Lord Rector of the University.

The declinator was repelled.

COURT OF SESSION.

OUTER HOUSE.

(Before Lord Jerviswoode.)

WILSON *v.* TODDS.

Parent and Child—Husband and Wife—Aliment. Held (per Lord Jerviswoode, and acquiesced in) that an illegitimate daughter and her husband were bound during the subsistence of their marriage to aliment the indigent mother of the former.

This was an action at the instance of a person against her illegitimate daughter and her husband for aliment, on the ground that the pursuer was in bad health, and in a state of indigence, and unable to support herself. It was alleged by the defenders that the pursuer was married a number of years ago, but not to the father of the female defender; that the pursuer's husband carried on an extensive and prosperous business in Dundee down to the period of his death, which happened about fourteen years ago; and that after his death the pursuer intromitted with his whole moveable estate, and along with her two sons born of the marriage carried on the same business in Dundee. It was further stated by the defenders that neither of the defenders ever received a farthing from the pursuer, or her late husband's estate, and that Mr Todd did not get anything with his wife at marriage. It was pleaded in defence that the female defender, being a natural daughter and a marrried woman, with no separate estate, and the other defender being in no way related to the pursuer, they were not bound to aliment the pursuer, and also that their circumstances were not such as to enable them to aliment her.

The Lord Ordinary allowed both parties a proof, and appointed it to be taken before himself. The proof was accordingly taken and parties heard upon it, and the Lord Ordinary has issued the following interlocutor which has been acquiesced in:—

"The Lord Ordinary having heard counsel, and made avizandum, with the record and proof led before him, and whole process: Finds, as matter of fact, 1st, that the pursuer is the widow of the deceased John Wilson, piano manufacturer, Dundee, by her marriage with whom she had two sons, the elder of whom, John Wilson, died upwards of a year ago, and the second of whom, William Wilson, has died since the date of the present action; 2d, that the pursuer is about 63 years of age, is in indigent circumstances, and that she is in a condition of bodily infirmity and weakness, such as to render her incapable of earning by her own labour adequate means for her own support; 3d, that the defender, Mrs Todd, is an illegitimate daughter of the pursuer, and is the wife of the other defender, Robert Todd, who is called for his interest; 4th, that he, the said Robert Todd, is a fishcurer in Leith, and occupies a residence in or near Leith, the rent of which unfurnished is £35 a year, and that the said Robert Todd is in receipt of an income, in respect of his employment as a fishcurer, of not less than £100 per annum; and 5th, that there are no children of the marriage between the defenders, Mr and Mrs Todd: Further, finds as matter of law that the defender Mrs Todd and the defender Mr Todd, for his interest, are liable in aliment to the pursuer, so far as the same is requisite for her support: And with reference to the foregoing findings decerns against the defenders, as libelled, for payment to the pursuer of the sum of £10 yearly, in name of aliment to her, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof as at Whitsunday 1866, for the half-year succeeding that term, and so forth half-yearly, and termly thereafter, during the lifetime of the pursuer, or until she can support herself without the assistance of the defenders, with the legal interest on each half-year's aliment from the term of payment during the not payment of the same: Finds the pursuer entitled to the expenses of process, of which allows an account to be lodged, and remits the same to the auditor to tax and to report. "CHARLES BAILLIE.

"*Note.*—The Lord Ordinary thinks it sufficiently proved here that the pursuer is unable to support herself fully by her own labour; but he thinks she may still do something for her own support, and has fixed the sum of aliment with reference to this consideration; and he thinks it due to the pursuer to note this now, in case she should hereafter be advised to make a claim for farther aliment were the circumstances to change. In the case of Thom *v.* Mackenzie, Dec. 2, 1864, it was observed that, in such a case as the present, no special term for the endurance of the aliment should be fixed, under the terms of the decree, and this the Lord Ordinary has intended to avoid.

"The recent case of Reid *v.* Moir, July 13, 1866, seems a direct authority for the liability of the defender, Mr Todd, at least while his present marriage subsists. "C. B."

Counsel for Pursuer—Mr W. L. Mair. Agent—John Latta, S.S.C.

Counsel for Defenders—Mr Trayner. Agents—Murdoch, Boyd, & Co., W.S.

Saturday, Feb. 2.

SECOND DIVISION.

LEITH POLICE COMMISSIONERS *v.* CAMPBELL.

Expenses—Taxation—Counsel's Fees. A case having been three days debated in the Inner House, and two refreshers sent to counsel, one of them struck off by the Court.

In this case in the defender's account of expenses

there were charged, as fees to counsel for debate, six guineas for the senior and four guineas for the junior. The auditor in taxing struck a guinea off each fee. Fees were charged for the second day of the debate of four and three guineas, for the third day of five and three guineas, and for the advising of three and two guineas. The auditor allowed only three guineas to the senior for each continuation and two to the junior. He also struck a guinea off the fee sent to senior counsel for the advising.

The defender objected to the auditor's report, and, after hearing counsel, the Court took time to consider the matter.

To-day, judgment was delivered by

The LORD JUSTICE-CLERK—The Court considered this matter delicate, and thought it right to take time to consider it; and although we are always very unwilling to interfere in regard to such a matter as the amount of counsel's fee, we are bound, when a question is brought before us, to dispose of it. The fees sent for debate were six guineas to senior counsel, and four to the junior. We think these fees are perfectly reasonable. But we must take into account what follows. After the debate began on a Thursday it was resumed next day, and for that continuation of the debate four guineas were sent to senior counsel, and three to the junior. That also we should not, under ordinary circumstances, be inclined to interfere with. Then it appears that the discussion was to be resumed on the following Tuesday, and on Monday five guineas more were sent to senior counsel and three to the junior. We think these are fees which should not be allowed as betwixt party and party. As to the fees of three and two guineas sent for the advising, we think these are reasonable. The result is, that we are of opinion that eight guineas should be disallowed as betwixt party and party, and it so happens that that is just the sum which the auditor has by another process taxed off the account. We shall therefore, for the sake of simplicity, just approve of his report, but, at the same time, it must be distinctly understood that we do not approve of the cheese-paring plan which the auditor has resorted to for the purpose of reducing the aggregate amount of the fees charged.

Counsel for Pursuers—The Solicitor-General. Agent—William Mitchell, S.S.C.

Counsel for Defender—Mr Pattison. Agents—J. A. Campbell & Lamond, W.S.

Friday, Feb. 1.

SECOND DIVISION.

HOWDEN *v.* FLEEMING AND OTHERS.

Entail—Register of Tailzies—Act 1685—*Clause of Devolution—Sequestration—Trustee.* A deed of entail provided that if the heir of entail in possession should succeed to a peerage, the estate should devolve on the next heir entitled to succeed, just as if the person succeeding to the peerage were naturally dead. The entail was never registered in the Register of Tailzies, and the heir of entail to whom the clause of devolution applied, and who succeeded to a peerage in 1860, held possession of the estate until his death in 1861—Held (diss. Lord Benholme) that the heir of entail in possession having been allowed to continue in possession till his death on a title which, *ex facie* of the records, made him proprietor in fee simple, the estate was liable for the debts contracted by him during his lifetime, without distinction between those debts which were contracted by him before his accession to the peerage and those contracted by him subsequently to that event. The trustee on the sequestrated estate of the heir in possession accordingly preferred.

This was a petition at the instance of James Howden, C.A., trustee on the sequestrated estate of the deceased John, fourteenth Baron Elphinstone, concluding to have the lands of Duntiblae and others, which belonged to the Baron, transferred to and vested in the petitioner as trustee. The defenders, the Hon. Cornwallis Fleeming and another, maintained that these lands were not carried by the sequestration, inasmuch as by the express conditions and limitations of Lord Elphinstone's title to these lands, and the clause of devolution in the entail thereof, which provided that on any heir of tailzie succeeding to a peerage his right in the lands should cease, and the lands should devolve upon the next heir, Lord Elphinstone, by succeeding to this peerage in July 1860, ceased to have any right in the lands, and that, therefore, at the date of Lord Elphinstone's death in 1861, and the date of the sequestration, there was no right to the said lands which Lord Elphinstone could legally convey or his creditors could attach for his debts. The trustee in reply maintained that the entail having never been recorded in the Register of Tailzies, no devolution took place on Lord Elphinstone succeeding to the peerage, and the lands were attachable for debts of the bankrupt.

The Lord Ordinary (Benholme) rejected the claim of the trustee.

The trustee reclaimed.

LORD ADVOCATE, DEAN OF FACULTY, and MILLAR, for him.

PATTISON, for the defenders.

At advising,

LORD JUSTICE-CLERK—The question to be determined in this case is, whether the lands of Duntiblae were a part of the estate of the late Lord Elphinstone within the meaning of the 102d and 106th sections of the Bankrupt Act. After his death, Lady Hawarden, made up a title to these lands as his successor by special service as heir of provision. The case therefore apparently falls within the operation of these sections of the Act, if the lands belonged in fee-simple to Lord Elphinstone.

The deceased Lord received a conveyance of these lands by a disposition containing the prohibitions and fetters of a strict entail, and as he completed his feudal title under that conveyance, there can be no doubt that the estate would have descended to Lady Hawarden as the next heir of tailzie and provision, unaffected by the debts or deeds of the deceased, if the tailzie had been completed by registration in terms of the Act 1685.

But the tailzie never was registered in the Register of Tailzies, and therefore the deceased was in law, while he possessed the estate, the fee-simple proprietor, so far as regards the rights of his creditors or purchasers from him. His creditors could not be restrained from attaching the estate for debts either personal or real. Even if the entail were now recorded, provided these debts were contracted prior to the registration, the estate would be liable for them. This is settled law by the cases of Smollett *v.* Smollett, and Ross *v.* Drummond.

The peculiarity of the present case, however, on which the respondents chiefly rely, is that the dis-