

door, and the bell-wire is broken. He has a small house of two rooms and kitchen, and the house appeared tolerably well furnished for a house of the kind. The rent was mentioned £10 or £10, 10s. per annum. He is employed, and has been so for about ten days, as canvasser, under Mr M'Cormick, agent for the City of Glasgow Friendly Society, residing at 135 High Street, and receives from 6s. to £1 per week, varying according to the number of insurances effected. Previous to this, and for some time, he was employed in a similar way by Mr Angus M'Kay, 4 Hill Place, agent for the Scottish Legal Insurance Company, and by Mr Geddes, St John Street, agent for the British Legal Insurance Company, and his wages when in these employments might be about £1 per week. None of the persons from whom this information was obtained had any knowledge that Johnston is a man of means, or thought he was in circumstances to be accepted as mandatory. "ARCHD. DAVIDSON."

LORD KINLOCH then approved of the mandatory, and pronounced the following interlocutor:—

"Edinburgh, 3d July 1867.—The Lord Ordinary having heard parties' procurators, repels the objections stated for the pursuer to the sufficiency of the mandatory proposed for the defenders, and sists James Johnston as mandatory for the defenders in terms of his minute, No. 30 of process; grants leave to the pursuer to reclaim against this interlocutor."

The pursuer reclaimed, but the Court adhered.

Counsel for Pursuer—Mr Pattison and Mr Alexander Nicolson. Agent—James Somerville, S.S.C.

Counsel for Defenders—Mr W. N. M'Laren. Agent—J. M. Macqueen, S.S.C.

Wednesday, July 17.

#### DUKE OF BUCCLEUCH AND OTHERS v.

COWAN AND OTHERS.

(*Ante*, vol. ii, p. 253, vol. iii, pp. 61, 138.)

*Process—Jury Trial—Auditor's Report—Counsel's Fees—Scientific Witnesses.* Circumstances in which rates fixed for fees to be allowed to counsel, and for the attendance of scientific witnesses, and for the preparation of reports.

This case came before the Court to-day on a report from the auditor of the pursuers' account, who were ultimately successful in the action. The pursuers objected that the auditor had disallowed a payment of £27, 9s. 3d. made to a water-bailiff in 1848, during the dependence of the original action, and maintained that as they had been successful in the case they should be relieved of it. The Court, however, approving of the auditor's report, held that as this was a payment made under a mutual agreement it must be held to be extra-judicial. The auditor's report dealt with three other matters—(1) the number of counsel; (2) fees allowed; (3) fees to scientific witnesses. The auditor allowed two seniors and one junior, owing to the importance of the case; and to these he allowed 30, 20, and 14 guineas per day respectively, following the principle of doubling the fees, which were allowed in the case of *Hubback v. North British Railway Company*, 25th June 1864, a course which he considered reasonable looking to the importance of the interests involved in this case. The fees of the scientific witnesses were fixed by the auditor in conformity with the rule adopted in the case of *Gillespie v. Russell*, at 5 guineas per diem, 3 guineas being allowed for each analysis; and to this the Court

adhered. The auditor's report accordingly was in all respects sustained. The amount of the account was £6053, 10s. 4d.; taxed off, £2346, 11s. 7d.; leaving a balance due by the defenders of £3706, 18s. 9d.

## COURT OF TEINDS.

Wednesday, July 17.

MINISTER OF KIRKCALDY, PETITIONER.

*Parish—Minister—Glebe Land (Scotland) Act 1866.*

Form of procedure in a petition by a parish minister for authority to feu a glebe, presented under the "Glebe Lands (Scotland) Act 1866."

This was a petition at the instance of the Rev. Mark Johnston Bryden, minister of the parish of Kirkcaldy, in the presbytery of Kirkcaldy and county of Fife, for authority to feu part of the glebe of Kirkcaldy, presented under the provisions of the Glebe Lands (Scotland) Act.

The petition, after setting forth the name and designation of the petitioner, narrated at length the 5th section of the Act, the interpretation clause (section 2), and the 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, and 18th sections, and stated generally the nature of the remaining sections. The petition then stated the stipend of the petitioner, and the extent and population of the parish; that the glebe consisted of two portions, one portion called the small glebe, in the immediate vicinity of the manse, and the other portion called the large glebe, and of above 4616 acres in extent, lying at some distance; that the whole of the said glebe was at present arable, except a small part occupied as a rope-work; and that the large glebe was well adapted for sites for workmen's houses, for which there was a great demand in that neighbourhood, there being large public works in the immediate vicinity. The petition further stated that the minimum yearly feu-duty at which it was proposed to feu this portion of the glebe was £20 per acre, but it was anticipated that a considerably higher rate could be obtained. The rents at present derived by the petitioner from the large glebe amounted to £38, 16s., and were the whole of it feued, which there was every reason to believe would be done forthwith, the feu-duty at the minimum rates proposed would amount to £92, 18s. 4d., and the petitioner and his successors in office would thereby be benefited to the extent of £83, 16s. 4d. per annum, subject to the interest on the expenses of the present application, and of making the necessary streets, roads, passages, sewers, and drains to and through the glebe, which, however, would be ultimately paid off by the casualties of superiority.

The petition prayed for intimation and service in terms of the Act, and craved the Court:—" (1) To authorise and empower the petitioner, and his successors in office, at the sight of the heritors, as defined by the said Act, and of the presbytery, subject to the provisions of the foresaid Act, to grant and disposed of the portion second above described, of the said glebe of Kirkcaldy, or any part or parts thereof, in feu-farm, fee, and heritage for the highest feu-duties that can be got for the same, not being less than the minimum feu-duty to be fixed by your Lordships, and that either by public auction or private contract, to feu the whole or any part or parts of the said portion of the glebe of Kirkcaldy, and that at all time or times and in such portions as he or they, with the con-

sent of the said heritors and the presbytery, may from time to time, or at any time, think fit; (2) To fix and determine, by order or interlocutor, the minimum rate or rates of feu-duty at which the said portion of the glebe may be feued; (3) To approve by interlocutor of the form or forms of feu-charter to be lodged in process by the petitioner, as the same may be altered or adjusted under your Lordships' authority, as the form or forms to be made use of from time to time as such feus respectively shall be granted; (4) To authorize the petitioner and his successors in office, with the consent of the heritors and the presbytery, to grant the said feus in the form or forms so approved of from time to time as he and they shall think proper, subject to any conditions or stipulations which your Lordships may deem proper; and (5) To decern the amount of the costs, charges, and expenses incurred by the petitioner in the present application and incidental thereto, and of making and constructing streets, roads, passages, sewers, and drains, in or through the said portion of the glebe, as the same shall be ascertained in the course of the present petition, a permanent burden upon the said glebe, all in terms of the before-recited Act; or to do further or otherwise in the premises as to your Lordships shall seem just."

Along with the petition was lodged a draft form of feu-disposition.

The Lord Ordinary (BARCABLE) remitted to Mr Charles Macgibbon, builder, to inquire into the facts stated in the petition, and to report his opinion thereon, and as to the minimum rate at which, if the petition was granted, the glebe should be feued or leased for building, and as to any conditions or restrictions subject to which the prayer of the petition should be granted.

Mr Macgibbon reported.

The Lord Ordinary thereupon reported the case to the Teind Court.

The Court—this being the first petition under the Glebe Act 1866—remitted to Mr J. G. Murray, W.S., to examine the proceedings, with the proposed feu-charter, and to frame such a form of feu-charter or feu-contract as, in his opinion, would be most suitable and convenient to this and similar cases.

Mr Murray reported, with a form of feu-charter, in terms of this remit.

The petition was again moved in before the Court, and the following interlocutor was pronounced:—"Having resumed consideration of the petition, with the report of the Lord Ordinary and also the report of Mr T. G. Murray, W.S.. Approve of the form of feu-charter, as now amended and finally adjusted, No. of process now authenticated as relative hereto, and appoint it to be the form of feu-charter to be used from time to time *mutatis mutandis* in feuing the portion of the glebe of Kirkcaldy after-mentioned; prohibit the clerk from lending the same, but authorize him to give to all parties interested certified copies thereof. Authorize and empower the petitioner and his successors in office, ministers of the said parish, subject to the provisions of the Glebe Land (Scotland) Act 1866, to dispose that portion of the said glebe described in the petition as the large glebe of Kirkcaldy, or any part or parts thereof, in feu for the highest feu-duty or feu-duties that can be obtained for the same, not being less than the rate of £20 per acre, and that in such portions and at such times as he and they may find expedient, to be holden by the disponees and feuars thereof of and

under the minister of the parish for the time alternately as lawful superior; and *quoad ultra* supersede in the meantime further consideration of the petition: Allow an account of the expenses incurred by the petitioner to be lodged, and remit the same to the auditor to tax and to report."

The LORD PRESIDENT intimated the opinion of the Court to be, that the petition should remain in Court, to be moved in from time to time as might be necessary, and that it would not be necessary in future in such petitions to set out at length all the clauses of the Act, but that a general reference would be sufficient.

Counsel for Petitioner—A. Gibson.

Agent—G. F. Scott, S.S.C.

## COURT OF SESSION.

Wednesday, July 10.

### FIRST DIVISION.

#### CAMPBELL, PETITIONER.

*Tutor-nominate—Authority to Borrow Money—20 & 21 Vict., c. 56, § 4.* Petition by tutor-nominate for authority to borrow money on security of pupil's estates held properly presented in the Inner House.

This was a petition at the instance of Colin Campbell, tutor-nominate to Robert Dixon of Leveugrove, Dumbartonshire, for authority to borrow money on the security of the pupil's heritable estate, to enable him to discharge certain debts due by the estate of the pupil's father, the late Robert Dixon.

FRASER, for the petitioner, raised the point whether such a petition ought to be presented in the Inner House or before the Lord Ordinary. He cited 20 and 21 Vict., c. 56, § 4, and the following authorities:—*Morison*, 20th Feb. 1857, 19 D. 498; *Morison*, 19th July 1861, 23 D., 1873; *Kyle*, 10th June 1862, 24 D., 1083; *Young*, 25th Feb. 1864, 2 Macph., 695; *Stewart v. Chalmers*, 14th June 1864, 2 Macph., 1216; *Brown's Tutors*, 16th July 1867; *ante*, p. 184.

LORD PRESIDENT—It seems to me that this clause of the Act of Parliament has been construed with great attention to this general principle or rule, that all applications to what is properly the *nobile officium* of the Court, fall naturally to be presented to the Inner House. And certainly the attention the Court have paid to that general rule has very much limited the general words at the beginning of the clause; and the reason for that limitation is sound. As to the present petition, that is clearly an application to the *nobile officium* of the Court in the highest sense of the term. There is no more delicate exercise of the equitable jurisdiction of the Court than in granting powers to tutors-nominate. I have no doubt that this is rightly presented in the Inner House.

The other Judges concurred, LORD DEAS observing that the other construction suggested would lead to this, that the whole *nobile officium* of the Court would be committed to the Lord Ordinary. The Court had before them a number of these petitions by tutors-nominate for special powers; they had held that they were all competent, and that the Court must bestow the greatest attention on the case before they would exercise their *nobile officium*.

On the motion of the petitioner, the Court remitted to the Lord Ordinary to inquire and report.

Agent for Petitioner—John Ross, S.S.C.