

but the grazing rent would fall under the hypothec. It appears to the Sheriff-substitute that the landlord is not bound to be satisfied with this sub-letting of the lands by the defender, and that he is entitled to insist on having the farm fully stocked with cattle belonging to the tenant himself, and which would thus be directly available for satisfying the landlord's claims.—(See the case of *Mackye v. Nabony*, 4th December 1780, Mor. Dic., p. 6214.)

"The defender at the debate referred to his household furniture and farm implements as constituting a fund of security for the landlord's rent. But there is no sufficient authority for this doctrine. Mr Hunter, in his work on Leases, shows by an elaborate analysis of decided cases, that 'it must still be deemed an open question whether the hypothec extends over the implements of husbandry or furniture in agricultural subjects.'—(Vol. ii., p. 348.)"

The Sheriff (HUNTER) altered *in hoc statu*, and remitted to Mr Wilson to inspect and report. The reporter stated that the farm was capable of sustaining from 100 to 120 head of cattle, and that there were upon it 82 head of cattle and 100 sheep, besides 10 horses; but it was admitted by the defender that only three cows, one calf, and two horses belonged to him.

The Sheriff-substitute, on advising the case of new with the report, repeated his judgment.

The Sheriff adhered, and pronounced the following interlocutor:—

"The Sheriff having advised the reclaiming petition for the defender, with the answers thereto for the pursuer, and the report by Mr Wilson, and having resumed consideration of the whole process, in respect of the reasons stated in the note hereto annexed, Affirms the interlocutor appealed against, and dismisses the appeal.

"ROBERT HUNTER."

"*Note.*—The Sheriff sees no reason for disturbing the interlocutor of the Sheriff-substitute.

"The report of Mr Wilson is full and precise, and there is nothing objectionable in the mode in which the inspection was conducted.

"The competency of a remit and report in a case like the present is undoubted; for it is not of a character to entitle a party to demand a proof. The case might have been decided on the admissions by the defender emerging *ex lege* from the tenor of the record. So the Sheriff-substitute soundly deemed; but the Sheriff thought it would be advisable to have, in addition, the state of the farm and stocking ascertained by the inspection of a man of skill; and his report has confirmed the facts, and the results which the record contains."

The defender suspended.

The Lord Ordinary (KINLOCH) refused the suspension except in so far as the decerniture against the defender to cultivate his farm according to the rules of good husbandry, holding that no case of that sort had been made out against the defender.

The defender reclaimed; but to-day the Court adhered, finding neither party entitled to expenses in the Outer-House, and modifying the expenses against the defender since the date of the Lord Ordinary's interlocutor.

Agent for Suspender—John Walls, S.S.C.

Agents for Respondent—C. & A. S. Douglas, W.S.

Wednesday, December 11.

CAMPBELL, PETITIONER.

*Declinator—Petition.* Declinator by the Junior Lord Ordinary, on the ground that he was one of the petitioner's curators, and that the petition was presented with his concurrence, *sustained*, and remit made to the next Junior Lord Ordinary to deal with the petition.

This was a petition brought by a minor for authority to record an entail. It was entered before the Junior Lord Ordinary (MURE). His Lordship, however, stood in the relation of curator to the petitioner under his father's trust-deed, and the petition was presented with his concurrence. He in consequence proposed a declinator. His Lordship having reported the matter to the Court, their Lordships, after consultation, sustained the declinator, and remitted to the Junior Lord Ordinary (BARCAPLE) to deal with the petition. The following is the interlocutor of the Court:—

"*Edin.*, 11th Dec. 1867.—The Lords sustain the declinator of Lord Mure, Junior Lord Ordinary, to pronounce an order in this cause, by reason of his being a party named in the settlements of the estate, and remits the petition to the next Junior Lord Ordinary.

(Signed) "GEORGE PATTON, I.P.D."

Counsel for Petitioner—Mr William Ivory.

Agents—Maclachlan, Ivory, & Rodger, W.S.

Wednesday, December 11.

LOCALITY OF SELKIRK.

(*Ante*, vol. iii, p. 327.)

*Teind—Decree of Valuation—Division—Share of Commonly—Part and Pertinent—Accessory.* Circumstances in which held that a share of a commonly allocated after a valuation of lands to which it attached, was included in the valuation as a part and pertinent of, or as accessory to these lands.

*Observed*, that there is a presumption in favour of such inclusion when two things concur, (1) the division of the commonly subsequent to the valuation, (2) identification between the principal lands in the valuation, and the lands in the division.

This was a petition which arose upon certain objections stated by Mr Plummer of Sunderland Hall to the Rectified Scheme of Locality of the parish of Selkirk; and the question in substance was, whether Mr Plummer was liable to be localled upon for stipend, upon the footing that the share of the commonly of Selkirk was an unvalued subject?

It appeared from the titles (1) that the teinds of the lands of Sunderland Hall were valued in 1636; and (2) that in 1681 there was allocated to these said lands a specific share of the commonly of Selkirk in lieu of certain rights, either of servitude or common property, which the said lands formerly possessed over that commonly. In these circumstances, it was maintained by Mr Plummer that the rights of commonly attached to the lands in 1681 must be presumed to have been attached to them in 1636; that, being so attached to the lands in 1636, the said rights of commonly must have been included as pertinents in the valua-