

not be completed, he was told by Mr Lessls, for two or three years at least. Now, in addition to that, the resolution was coupled with a limitation of a kind which really showed that it could not be relied upon. The resolution was, that in the meantime these proceedings were only to be to the amount of £7000; and what their Lordships had to contemplate was, that after two or three years—that was, after the College Street improvements were effected—there might be proceedings to the extent of £7000 carried on in the way of pulling down the buildings in this proposed new street. Anything they had had as to the action of the Improvement Trustees was most uncertain, and at the best very remote. He had no doubt the Magistrates, if their Lordships did not think the Chalmers' Close site suitable, would be disposed to do anything that was reasonable for getting the site which the Kirk-session proposed, before the Court; and he concluded by asking the Court to approve of the site which the Kirk-session had suggested.

Mr M'LAREN, in replying, said that the Magistrates would be prepared to build the church now, before the new street was opened, and he understood that the existing accesses to the site were sufficient.

Mr LEE said he did not think that the resolution of the Improvement Trustees authorised any proceedings until after the completion of the improvements at College Street. He wished to state that the old Trinity College Church was not in the parish of Trinity College. The church was on the north side of the Nor' Loch, whereas the parish was on the south side.

The Court then called upon Mr Lessels, who was present, to make a statement as to the comparative expense of erecting the church on the sites at Chalmers' Close and at Market Street. He stated that if the church were erected at Market Street the architecture would require to be of a plainer description than if it were built in Chalmers' Close, so as not to exceed the estimated cost.

The case was adjourned till the following Tuesday, in order that the minutes given in by the parties might be printed.

On Tuesday the Court, without hearing further argument, pronounced an interlocutor, in which they superseded consideration of the questions raised by the Magistrates and Kirk-Session till the third sederunt day in October, in order that the Lord Provost and Magistrates might communicate with the Improvement Trustees, and ascertain on what terms and conditions they could obtain the site at Chalmers' Close. The Court also directed the Lord Provost and Magistrates to report, on or before the first sederunt day in October—" (1) Upon what terms and conditions they can acquire the proposed site; (2) within what period they will undertake that the church shall be built and completed there; (3) what modes of access shall be allowed to the parishioners and congregation if the proposed alterations in Chalmers' Close are not carried out; and (4) what objection the Council have to the Market Street site." The question of expenses was for the meantime reserved.

The Court remitted to Professor Macpherson to report on the following points:—" (1) What are the sources of the various funds forming the capital of the Trinity Church, and how much are they? (2) In what modes are these funds invested? (3) What are the terms of mortification by private individuals in favour of the charity? (4) How and by whom the beneficiaries to these funds have been selected;

and, in particular, what rights of presentation other patrons besides the Town Council have had? (5) What is the number of outdoor pensioners? (6) What is the amount of allowances? (7) What is the gross annual income of the charity? (8) Any other matter the reporter thinks it proper to report on; and (9) What scheme the reporter would recommend?" The Court authorised Mr Macpherson to employ any accountant or other skilled person to assist him, and to hear parties, and to take evidence.

The following minute was accordingly lodged for the Lord Provost and Magistrates:—

"M'Laren, for the Governors and Administrators of Trinity Hospital, the Lord Provost, Magistrates and Council of Edinburgh, stated that they had communicated with the Trustees under the "Edinburgh City Improvement Act 1867," in order to ascertain on what terms and conditions they could effect a purchase of the site for Trinity College Church, suggested in Chalmers' Close; and had to state as follows:—(1) They can acquire the site referred to for £1760, with possession at Whitsunday 1870; (2) They will undertake that the proposed church shall be built and completed on the said site within a period of two years or thereby; (3) The present accesses to the area on which the church is proposed to be built are Chalmers' Close and Monteath's Close from the High Street, and Chalmers' Close from Old Physic Gardens. There can be no doubt that the street in continuation of Market Street will be formed without delay, as the resolution of the Improvement Trustees to form this street and to acquire the necessary property, is final. Their architect reports that the upper part of the street, viz., that portion between the church and the High Street, will be ready by Whitsunday 1871, and that the street may be expected to be open in its whole length by Martinmas 1871; (4) The Minuters object to the site suggested by the Kirk-Session of Trinity College Church, 1st, Because it is outwith the parish, and not convenient for the inhabitants thereof. 2d, Because a church is required in the parish, and is not required on the site suggested. 3d, Because the fund available, according to the judgment of the House of Lords, is insufficient to provide a church on the site suggested, and the minuters think that it would be contrary to their duty and to the judgment of the House of Lords to receive contributions or subscriptions to induce and enable them to provide a church on that site."

On the case being called to-day,

DEAN OF FACULTY and LEE, for the Kirk-Session, stated that they would not continue their opposition to the proposed site in Chalmers' Close.

LORD ADVOCATE and M'LAREN, for the defenders, acquiesced.

The Court accordingly, in respect of there being no opposition, approved of the site proposed by the defenders.

Agent for Kirk-Session—James Macknight, W.S.

Agents for Defenders—Whyte-Millar, Allardice & Robson, S.S.C.

Saturday, October 30.

SECOND DIVISION.

WOTHERSPOON *v.* WOTHERSPOON.

Husband and Wife—Separation—Aliment. Circumstances in which the Court fixed the amount

of aliment to be paid to a wife judicially separated from her husband on proof of cruelty.

A wife brought an action of separation and aliment against her husband on the ground of ill-treatment and cruelty. A proof having been led, the Lord Ordinary (JERVISWOODE) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel and made avizandum and considered the proof with the record, productions and whole process: Finds, in point of fact, that the defender has been guilty of grossly abusing and maltreating the pursuer, his wife: Therefore finds that the pursuer has full liberty and freedom to live separate from the defender, her husband; and decerns and ordains the defender to separate himself from the pursuer, *a mensa et thoro*, in all time coming: Decerns against the defender for payment to the pursuer of the sum of £40 sterling per annum in name of aliment, payable half-yearly and in advance, at the terms, and in the portions concluded for, with the legal interest of each term's payment from the time the same falls due till payment thereof, but under deduction always of such sums as have already been paid to account of said aliment: Finds that the pursuer is entitled to the custody of Archibald Wotherspoon, a pupil, the only child of the marriage between the pursuer and defender, during the years of his pupilarity, and decerns against the defender for payment to the pursuer of the sum of £10 sterling per annum for the aliment of the said Archibald Wotherspoon, as long as he shall remain in the custody of the pursuer, payable half-yearly and in advance, at the terms and in the portions concluded for in the summons, with the legal interest of each term's payment from the time the same falls due until payment thereof, but under deduction of any sums which have been already paid to account of said aliment: Finds the defender liable to the pursuer in the expenses of process so far as not already paid: Allows an account of such expenses to be lodged, and remits the same to the auditor, to tax and to report."

The sum allowed by the Lord Ordinary as aliment was the same amount as the parties had stipulated for under a voluntary contract of separation.

The wife reclaimed.

PATERSON for her.

J. M. DUNCAN in answer.

At advising—

LORD-JUSTICE CLERK—This is a reclaiming note in an action of separation and aliment by a wife against her husband, and is confined to the question of the amount of aliment awarded to the wife by the Lord Ordinary. The action is founded on the husband's cruelty, which is not now disputed. The amount of aliment has been fixed by the Lord Ordinary at £40, which was the amount provided by a voluntary contract of separation entered into by the parties in 1865.

The husband's income, arising from heritable property, is admitted to amount to £268, besides the interest on the balance of the price of a house, which balance amounts to £250. The total income may therefore be assumed at £278 annually. Taxes and repairs reduce this by £35; leaving the free income £243.

It is said that the husband pays to an unmarried daughter £100 per annum, and £20 to a sister in reduced circumstances. It has been farther explained to us that the wife has an annuity of £30 secured to her from her first husband's estate, and she has also an allowance of £30 a-year from her

husband's trustees for the aliment of her son by her first marriage. This last allowance, however, is precarious in itself, and as her son is now sixteen years of age, must shortly terminate.

No inflexible rule can be laid down in such cases. In the last reported case before this Division of the Court—that of *Lang v. Lang*—it was stated that a fourth of the husband's free income had been usually awarded, and was as near a general measure of liability as the decisions appeared to establish. Every case of the kind, however, must depend on its special circumstances; the husband must not be left unreasonably impoverished, while the wife who has been compelled to separation owing to the ill-treatment of the husband must be fairly and favourably considered.

The allowance given by the husband to the daughter cannot be taken into account as a deduction from his income, although the expense of maintaining her in family must be deducted in the estimate of his available means. The £20 a-year paid to his sister can hardly come into competition with the wife's claim; but the sum in this case does not materially affect the result.

On the other hand, the £30 awarded to the wife by the trustees of her late husband must be thrown out of view, as precarious in itself and temporary in its nature. The annuity derived from her husband's estate is, on the other hand, permanent, and must enter into our calculations.

On the whole, I am of opinion that the sum awarded by the Lord Ordinary is not sufficient, and that an addition of £15 a-year ought to be allowed. The Court award £55 per annum.

The other Judges concurred.

Agents for Pursuer—J. & A. Peddie, W.S.

Agents for Defender—J. & R. Macandrew, W.S.

Saturday, October 30.

OLIVER v. ROBERTSON.

Bankrupt—Caution—Expenses—Personal Exception.

The pursuer of an action became bankrupt and was ordained to find caution for expenses. The cautioner provided ultimately withdrew, whereupon the motion for new caution was renewed by the defender. *Held* (upon evidence that the defender had been instrumental in causing the withdrawal of the first cautioner) that he was barred from maintaining his equitable right to demand caution from the bankrupt.

This case, which was an action at the instance of Andrew Oliver, draper, Kilmarnock, against William Robertson, flesher there, was brought for the purpose of setting aside certain judgments in a cause in the Sheriff Court of Ayrshire. The pursuer some time ago became bankrupt, and was ordained to find caution for expenses. He found caution in the person of a cousin of his own, but the cautioner subsequently intimated his withdrawal. The defender thereupon moved for new caution. This the pursuer opposed, on the ground that the defender had induced the former cautioner to withdraw by approaching him with exaggerated statements of the risk he ran, and had thus barred himself *personali exceptione* from insisting for new caution. A minute having been put in by the pursuer stating the facts, and a letter having been produced from the former cautioner, written at the time of the withdrawal, and giving an account of