

as before mentioned. Thus, in the report of the Committee of Town Council, dated as early as October 1859, it was recommended "that the space lying between Victoria Wharf and Mr Irvine's new house, and below Mr Foubister's shop, now used as a place for sheltering fishermen's boats, should be properly levelled and macadamized," so as to be connected with Victoria Wharf. Then in July 1865, when subscriptions were in course of being obtained for his purpose, it was stated to a joint meeting of the Town Council and Commissioners of Police, by the convener of the committee, that if the south side of Victoria Wharf were improved by the erection of the sea-wall which had been proposed, a greater amount of support would be obtained; and upon this statement it was resolved "that in regard to the extension originally proposed of Victoria Wharf, and the pier below the late Mr Irvine's property, preparations be made for commencing the work early next spring," and, accordingly, in 1866 the sea-wall was built, and the ground levelled and connected with the rest of the ground adjoining to Victoria Wharf. After this it seems not a little strange that sanction should have been given to the appropriation by the respondent of ground gained in this manner from the sea for the public behoof. Nor can any support be derived in justification of this proceeding from any power or authority conferred on the Magistrates and Council as Commissioners of Police under the General Police Act. All the provisions founded on in the argument have reference solely to the improvement of the public streets, and to steps taken with that view, and can on no construction be held to embrace alterations on the area of ground here contemplated. Accordingly, it is not under the Police Act at all that the respondent's proceedings were adopted.

The considerations now stated afford a complete answer to the argument so strongly pressed by the respondent, that his premises were *de facto* bounded by the sea. For not only do his titles purport no sea boundary, and confer only a right of access to the shore, but (1) the space which he has appropriated is not all seaward, but to a large extent landward, if the gained ground at the market cross can be so called; and (2) even the ground seaward has not been gained by means of embankment through his or his author's operations—which is the only case contemplated in the passage from Erskine on which reliance was placed—but has been gained from the sea in such manner as to make the space, like the rest of the ground extending from Commercial Street down to Victoria Wharf, public property, and cannot be interfered with without the sanction of the Crown. Nor (3) is it to be forgotten that in a possessory question the existing state of things falls to be preserved and protected even were it within the power of the respondent by declaratory action to vindicate the right which he now asserts as against the Crown, and all other parties interested.

Entertaining the views now explained, it does not appear to me at all necessary to refer to the voluminous parole proof which has been led by the parties, farther than to say that after a careful perusal of it I can find no facts established having any essential bearing on the case, other than those which I have assumed to be supported by the proof, parole and documentary, in the explanatory statement leaning on the conclusions at which I have arrived.

The respondent, however, urges that the Crown

are not here stating objections, and that the complainants have no title to object. I do not think there is any ground for this plea in fact or in law. The titles of the several complainants give them sufficient interest to insist that the whole area extending from Commercial Street, along which their premises are situated, to the Victoria Wharf, shall remain unobstructed, as it has existed hitherto. To some extent, indeed, the proposed erection would certainly interpose between the property of some of the complainants and the sea; and the ground proposed to be enclosed would also limit and narrow the space that has been used by them and by the inhabitants of Lerwick as an access to and from the sea and Victoria Wharf, especially on the west side of the respondent's premises, near to the market cross. I cannot doubt, therefore, that there is title sufficient and interest in the complainants to insist in these proceedings. The case is essentially different from that of *Cameron v. Ainslie*, January 1848. There the boundary of the party whose operations were objected to was the sea beach, which the Court found must be held as extending to the sea shore; and, farther, the only use and possession alleged by the objectors (feuars in the village) had reference to the use of the shore as fishermen, under the statute Geo. II, which the Court held did not confer on them any right of servitude which they could vindicate, and which was accordingly disallowed, under reservation to the feuars of all their statutory rights as fishermen. Here there is no boundary of sea beach or sea shore in the respondent's title; and his attempt is to appropriate ground which has been gained from the sea, and which has been used and enjoyed free of obstruction by the objectors and others under titles which give them access to the sea and sea-shore.

On the whole, I am of opinion that the interlocutor of the Lord Ordinary ought to be adhered to; but I cannot conclude without expressing my entire concurrence in the observations made by him as to the unnecessary and inexcusable length to which the proof led by the parties has extended, notwithstanding of the urgent and repeated remonstrances of the Commissioner by whom the proof was taken.

The other Judges concurred.

The Court adhered.

Counsel for Reclaimer—Patison and Trayner.
Agent—W. Mason, S.S.C.

Counsel for Pursuers—Balfour and Darling.
Agents—Macnaughton & Finlay, W.S.

Wednesday January 22.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.]

GORDON'S TRUSTEES v. GORDON.

Succession—Annuity—Heritable Burden—Residue.

A left a trust-deed, with directions (1) to entail an estate on a series of heirs named, (2) to realize his "other estate," heritable and moveable, and fulfil the obligations of his marriage-contract, and pay legacies, (3) to pay the residue to certain persons, limiting to a fixed sum the claim of the successor to the entailed estate. The marriage-contract provided an annuity to the widow. Held, that this annuity was payable

out of the residue, and did not fall to be rendered a burden on the entailed estate.

This was an action of multiplepointing and exoneration at the instance of the trustees of the late Francis Gordon of Kincardine O'Neil against Elizabeth Isabella Johnstone Gordon or Scott, wife of Hugh Scott, of Gala, and grand-daughter of the truster.

The circumstances of the case were as follows:—

The late Mr Francis Gordon of Kincardine died on 27th January 1857, leaving a trust-disposition and settlement, dated 13th November 1851, and five codicils thereto, dated respectively 20th December 1852, 26th December 1853, 28th November 1854, 19th January 1855, and 22d January 1856.

In this deed the trustees are directed to employ the whole heritable and moveable estate. "*First*, For payment of all my just and lawful debts, and deathbed and funeral expenses, and the expense of executing this trust: *Secondly*, In the event of my said son marrying with the consent of my said trustees, or quorum foresaid, and having a family, for the purpose of conveying and disposing to his eldest son, and the heirs-male of his body, the said lands of Kincardine O'Neil, and my said other lands above described, all lying within the said parish of Kincardine O'Neil, under strict entail, with all necessary clauses; whom failing, to his second son, and the heirs-male of his body, and so on through the other sons of my said son; whom failing, to the eldest daughter of my said son, and the heirs-male of her body; whom failing, to the second daughter of my said son, and to the heirs-male of her body, and so on through the other daughters of my said son; whom failing, to the eldest son of my said daughter by her present or any future husband, and the heirs-male of his body; whom failing, to the second son of my said daughter by her present or any future husband, and the heirs-male of his body, and so on through her other sons; whom failing, to the eldest daughter of my said daughter by her present or any future husband, and the heirs-male of her body; whom failing, to the second daughter of my said daughter by her present or any future husband, and the heirs-male of her body, and so on through the other daughters of my said daughter; whom all failing, to my own nearest heirs and assignees; *Thirdly*, For the purpose of realising my other estate, heritable and moveable, and above conveyed, and of fulfilling and discharging the obligations contained in the marriage-contract executed by me and my dear spouse, Isabella Gordon, as well as for implementing and paying the legacies and donations which may be left by me in any last will or other writing, however informal, which I may execute, or which may be found in my own custody or that of any other person after my death." By the fourth purpose Mr Gordon provided for the comfortable maintenance of his son James; and by the fifth and sixth purposes he provided for certain additional provisions to his daughter and his widow. By the eighth purpose he provided for the event of his son marrying and having a family, which event did not happen. The seventh purpose of the said trust-disposition has reference to the occupation of the house, offices, and garden at Kincardine Lodge by the widow unless the son married with the approbation of the trustees, in which case he was to be entitled to the sole possession of the house, offices, and garden.

The truster proceeds to provide that; "*Ninthly*,

Failing my said son marrying and having lawful issue, for the purpose of paying and applying the residue and remainder of my said means and estate, heritable and moveable (excepting the said lands directed to be entailed as aforesaid), on my said son's death, to the children of my said daughter, whether of her present or any future marriage, and that equally; and in that event, the said lands directed to be entailed shall be entailed by my said trustees, or quorum foresaid, as aforesaid, so far as the foregoing destination in article second hereof will then apply, excepting always from any share of said residue the person or persons succeeding to the said entailed lands, who shall have right only to £1000 sterling out of such residue on my son's death: Declaring hereby that the period of vesting of the provisions hereby made in favour of the children of my said daughter shall be as at the death of their mother if she shall have survived my said son, or as at the death of my said son if she shall have predeceased him; but providing nevertheless that if any child or children of my said daughter shall die before the period of vesting above mentioned, leaving lawful issue, such issue shall be entitled to the share of said residue to which their deceased parent or parents would have been entitled if alive: And declaring further, that in no event shall any of the persons who succeed as aforesaid to the said lands directed to be entailed enter into the management thereof until his or her arrival at twenty-one years of age, and that in regard thereto, and also to the moveable property before conveyed, the same shall, during the minority of those having right thereto, be under the management of my said trustees for such minor's behoof."

By the contract of marriage between Mr Francis Gordon and his second wife, entered into in the year 1826, the said Francis Gordon bound and obliged himself, his heirs, and executors, to pay to the said Isabella Gordon, her heirs, executors, or assignees, a free yearly annuity of £400 sterling, after his decease. It was declared by the contract of marriage that in the event of the said Isabella Gordon entering into a second marriage, the foresaid annuity of £400 should be and the same was thereby restricted to £300 yearly after such second marriage.

Mr Francis Gordon was survived by his second wife, who is still alive, and who occupies the mansion-house, garden, and offices at Kincardine Lodge, with a home-farm adjoining, in terms of the seventh purpose of the trust-deed. Mrs Gordon has not again married, and her annuity has been regularly paid to her by the trustees. She is believed to be now from seventy-six to eighty years of age. The truster was also survived by two children of his first marriage, viz., a son, James Gordon, and a daughter, Elizabeth Shepherd Johnstone or Gordon, who died on 20th January 1863, survived by four daughters, one of whom died unmarried; another of whom, Elizabeth Isabella Johnstone Gordon, married Hugh Scott, Esq. of Gala, and has issue; and the other two, Augusta Elizabeth Anne, and Emily Matilda Elibank, are unmarried, but have arrived at majority.

The truster's son, who never recovered his mental powers, died unmarried on 27th March 1871. His sister, Mrs Johnstone Gordon, predeceased him, having died on 20th January 1863, survived by her husband, who is since dead.

On James Gordon's death it became incumbent

on the trustees—(1.) To entail the lands of Kincardine on Mrs Scott of Gala (Mrs Johnstone Gordon's eldest daughter), and the substitute heirs of entail, in terms of the ninth purpose of the trust-deed, and subject to the burdens or limitations imposed by the other provisions of the deed and by the truster's marriage contract; (2.) To pay over the residue to the two younger daughters of Mrs Johnstone Gordon, with the exception of £1000 thereof, payable under the trust-deed to Mrs Scott, who has succeeded to the estate of Kincardine.

At the date of the death of the truster's son the trust-estate consisted of the estate of Kincardine, having a gross rental of about £1100; of cash some-£500. On the one hand, Mrs Scott of Gala called on the trustees to execute a deed of entail of the what over £7000, and the furniture valued at nearly estate of Kincardine in her favour, unburdened with the annuity of £400 to the truster's widow; while, on the other hand, Miss Ann Elizabeth Augusta Johnstone Gordon, and Miss Emily Matilda Elibank Johnstone Gordon, demanded payment of the residue (less the £1000 payable to Mrs Scott), without any deduction on account of this annuity. Further, the truster's widow claimed right to occupy the house, offices, and garden, at Kincardine Lodge, and the farm which was set apart to her by the trustees during her life, while Mrs Scott denied her right to occupy these after the death of the truster's son, and claimed them for herself as heiress of entail. There was also a question relative to the erection of offices on the estate,—whether the burden of these should fall on the heiress of entail or on the residuary legatees.

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—“Finds that, according to the true construction of the said trust-disposition and settlement, the free yearly annuity of £400 provided to Mrs Isabella Gordon, the widow of the said Francis Gordon, by the antenuptial contract of marriage entered into between them of date 1st and 4th September 1826, is primarily a burden upon the residue of the trust-estate of the said Francis Gordon, other than his lands of Kincardine O'Neil, and the other lands specified and described in his said trust-disposition and settlement, and thereby directed to be entailed; sustains the first claim stated for Mrs Elizabeth Isabella Johnstone Gordon or Scott and her curator *ad litem*, and repels the first and second claims stated for the claimants Anne Elizabeth Augusta Johnstone Gordon and Emily Matilda Elibank Johnstone Gordon, and decerns: Reserves all questions of expenses, and appoints the cause to be put to the roll with a view to further procedure.”

And in his Note added—

“*Note.*—By the antenuptial contract of marriage entered into between the truster, Mr Gordon of Craig and Kincardine, and his wife, the claimant Mrs Gordon, he bound and obliged himself, his heirs and executors, to pay her a free yearly annuity of £400 during her life after his decease, restricted to £300 in the event of her entering into a second marriage. By his trust-disposition and settlement, in which he conveyed his whole estate, both heritable and moveable, to his trustees, for the purposes therein set forth, he directed his estate of Kincardine and others to be entailed, and failing his son marrying and having lawful issue, he appointed the residue of his means and estate thereby conveyed, which should remain after satisfying other trust purposes, to be paid to the child-

ren of his daughter, excepting such of them as should succeed to the entailed estate. The estate of Kincardine now falls to be entailed upon his granddaughter, the claimant Mrs Scott of Gala, and the substitute heirs of entail mentioned in his settlement, and the residue remaining after satisfaction of the other trust purposes falls to her two sisters, the claimants Misses Gordon. The estate of Kincardine and the said free residue are each of them sufficient to meet Mrs Gordon's annuity, and the question on which these claimants are at issue, and which has now been decided by the Lord Ordinary in the competition between them, is whether that annuity is a primary burden upon the estate of Kincardine or upon the free residue. The decision of that question depends upon the construction of Mr Gordon's trust-disposition and settlement.

“The Lord Ordinary understands the rule of law, as fixed by the decisions, to be that the heritable and the moveable succession must respectively bear the debts or burdens appropriate to each, unless the testator in his settlement gives express directions to the contrary, or gives directions with reference to the disposal of his means and estate which by clear and necessary implication plainly show that a particular burden or debt is to be paid out of that part of his succession upon which it would not fall but for these directions (*Macleod's Trustees*, 28th June 1871, 9 M.P. 903, and *cases there cited*). In the present case the Lord Ordinary is of opinion that the directions expressly given by Mr Gordon to his trustees in his settlement, with reference to the disposal of his estate, clearly show that it was his intention that they should fulfil and discharge the obligations contained in his marriage contract out of the estate, heritable and moveable, thereby conveyed to them, other than the estate of Kincardine, which he directed them to entail.

“The third trust purpose is in the following terms:—‘Thirdly, for the purpose of realizing my other estate, heritable and moveable, and above conveyed, and of fulfilling and discharging the obligations contained in the marriage-contract executed by me and my dear spouse Isabella Gordon, as well as for implementing and paying the legacies and donations which may be left by me in any last will or other writing, however informal, which I may execute, or which may be found in my own custody or that of any other person after my death.’

“The period when the entail of Kincardine fell to be executed was his son's death. This is shown by the directions to the trustees contained in the fourth, seventh, eighth, and ninth trust purposes. Until that entail came to be executed on the son's death, the duty of the trustees was to hold the lands of Kincardine and others directed to be entailed—to realize the whole other trust estate, and fulfil and discharge the widow's annuity and other marriage-contract obligations—to pay the testator's legacies and donations, among which are included the sum of £1000, which he directed the trustees (sixth purpose) to pay to his widow, ‘besides the allowances made by her marriage contract;’ and to apply the free yearly revenue remaining for the maintenance of his son, and also of his son's family should he marry with the approbation of the trustees. The trust-disposition and settlement is not well drawn; but upon a careful consideration of its provisions it seems to the Lord Ordinary to be clear that the testator's intention was, and that the directions which he accordingly gave to his trustees are, that his widow's annuity should be

fulfilled and discharged, and that the legacies and donations left by him should be paid out of the means and estate thereby conveyed to his trustees other than the estate of Kincardine, which he directed them to entail, and that the said estate of Kincardine should upon the death of his son be entailed free from the burden of these legacies and donations, and of the widow's annuity. This construction is in accordance also with the directions contained in the ninth trust purpose, whereby the trustees are directed, on the failure of his son without issue, to pay 'the residue and remainder of my said means and estate, heritable and moveable (excepting the said lands directed to be entailed as aforesaid)' to the children of his daughter, excepting such of them as should succeed to the entailed lands,—that is, as the Lord Ordinary considers, the residue of the trust estate, exclusive of the lands directed to be entailed which should remain after fulfilling and discharging the marriage-contract obligations, paying legacies and donations, and maintaining his son."

Miss Gordon and the Trustees having reclaimed, it was argued for the claimers that the heritable estate should bear the whole burden. Was it, or was it not, the primary intention to burden that portion of the means of the testator? The fact of its being an *annuity* would seem to raise a presumption in favour of this view, such being a natural burden to lay on a heritable estate. Provisions of this kind are extremely common, and we are fairly entitled to take into consideration this usual practice. The payment of the residue and the entailment of the estate are moreover directed to be simultaneous. The residue could not be at once paid over, in the view maintained by Mrs Scott, but both directions could be carried out immediately supposing the £400 of annuity were thrown on the estate of Kincardine. As to the annuity there is no express direction, but the testator had contemplated a large residue in place of the £7,000 which alone remains as a provision for his younger grandchildren.

Authorities—*Mackintosh's Trustees*, 8 Macph. 627. 7 Scot. Law Rep. 340; *Macleod's Trs.* 9 Macph. 903.

The pursuers argued—A *money annuity* is not a natural burden on heritage. The phrase is, "my other estate," which is equivalent to all my estate not otherwise destined. Mrs Scott comes forward and says, 'Give me Kincardine O'Neil,'—just as she would say 'Give me a heritable bond due to me.' This the trustees must do, and they must give it as a subject without burden; it carries none. The trustees are directed to pay the widow £400, and they have abundant money to provide this annuity. They are "to realize the estate heritable and moveable *other than* Kincardine," that they are not to realize. It is to fulfil the obligations contained in the marriage contract that this realization is to be made, and there is not any reason for their non-fulfillment or for transference of this burden to that portion of the truster's means which is excepted from such realization.

At advising—

LORD BENHOLME—This is a process of multiple-poining raised by the trustees and executors of the late Francis Gordon, of Kincardine, against Mrs Gordon or Scott, wife of Mr Scott of Gala, and others, for the purpose of ascertaining the legal distribution of the trust-estate of Mr Gordon. Mr Gordon died in the year 1857, leaving a widow, a son, and a daughter. It appears that the son was

weak in his mind, and esteemed by his father in capable of managing his own affairs; and as for the daughter, she had, in respect of a provision made upon her at her marriage, renounced all claim on her father's succession. The widow, besides other gifts, was entitled to an annuity of £400; and I may observe, that although this multiple-poining raises several minor questions in regard to the distribution of Mr Gordon's estate, the only point that has been decided by the Lord Ordinary, and the only point to which your Lordships' attention was called, was the question upon what part of this estate—whether upon the heritable landed estate of Kincardine O'Neill, or upon the money, the residuary part of it,—this annuity of £400 was a primary burden. (His Lordship here read the purposes of Mr Gordon's trust, and proceeded)—

Now what took place was this, the truster's son died unmarried in the year 1871, his sister (the daughter of Mr Gordon) had died in the year 1863, leaving three daughters, who are parties to this multiple-poining, and whose interests are at stake, in regard to the point which we have to determine. These daughters were, in the first place Mrs Scott, who married Mr Scott of Gala; another lady, who married Mr Muir Mackenzie; and a third, who is still unmarried. As regards the estate of Kincardine O'Neil, it falls to be conveyed under strict entail to Mrs Scott of Gala with a number of substitutes; and in respect of her becoming the institute in the entail of that estate, she does not share in the distribution of the pecuniary residue of the estate except to the extent of £1000. Now, the question occurs—whether the annuity of £400 to which the widow is entitled, shall be made a burden on the rents of the entailed estate to which Mrs Scott is entitled, or shall be paid out of the pecuniary residue, which, I think, chiefly consists of an heritable bond for about £7000. It is very clear that there is here no question of intestate succession. In a question of intestate succession, the circumstance that this provision for the widow bears a tract of future time—being an annuity—would have had a very important effect in the solution of this question, because, by our intestate law of succession such provisions bearing a tract of future time fall to be paid *ceteris paribus* out of the heritable succession. They fall as a natural burden on the heir. But in this case there is nothing left to the determination of intestate succession. Everything is settled by distinct provision on the part of the testator. He has by his trust-deed appointed an entail to be executed, of which Mrs Scott is the first institute, with a provisional substitution; and in respect that she takes that heritable estate, she is debarred from sharing in the pecuniary part of the succession which forms the residue, except to the extent of £1000. Now as that pecuniary succession goes to the two younger sisters, the question arises—Are they not bound also to provide for the widow's annuity amongst other debts of the testator which fall to be defrayed out of their portion of the succession? It has been ingeniously argued that it naturally falls on the heirs of entail who take the landed estate, (she and her substitute drawing the rents for an indefinite period of time) to pay the annuity that is due to the widow. There was a good deal of plausibility in that, but I see no ground in law for it. This is a pecuniary obligation which may be discharged by purchasing an annuity, and there is nothing, in my opinion, in

that circumstance which goes so far as to throw this obligation upon the heiress of entail in the present case, because the succession of the testator here is to be regulated not by the rules of intestate succession, but by his own personal declaration. It appears to me, my Lords, that the part of his trust-deed in which he appoints the trustees to realise his other estate, heritable and moveable, and fulfil and discharge the obligations contained in the marriage-contract between him and his wife, clearly ascertains that the fund out of which not only his legacies and donations were to be paid, but also the provisions of the marriage-contract between him and his spouse were to be defrayed, was his moveable succession or residue; indeed the very character of the residue seems to me to impose the obligation that is here mentioned upon that part of his succession. I am, therefore, of opinion that the Lord Ordinary's Interlocutor, which deals with that question—and that question alone, is a right decision. He finds that according to the true construction of the disposition and settlement the free yearly annuity of £400 provided to Mrs Isabella Gordon, the widow of the said Francis Gordon, by the ante-nuptial contract of marriage entered into between them, of date 1st and 4th September 1826, in primarily a burden upon the residue of the trust-estate of the said Francis Gordon other than the lands of Kincardine O'Neil, and the other lands specified and described in his trust-disposition and settlement, and thereby directed to be entailed. And accordingly, he sustains the first claim stated for Mrs Scott and her curator *ad litem*, and repels the first and second claims stated for the other claimants, her sisters, reserving all questions of expenses, and appoints the cause to be put to the roll with a view to further procedure. That I suppose is for the decision of those minor points which are not now before your Lordships. In my humble opinion we ought to adhere to the Lord Ordinary's interlocutor.

Lords COWAN and NEAVES concurred.

LORD JUSTICE CLERK—That is the judgment of the Court. We adhere, and the case will go back to the Lord Ordinary.

The Court gave expenses since the date of the Lord Ordinary's interlocutor.

Counsel for Miss Johnstone Gordon, &c.—Solicitor-General (CLARK), Q.C., Millar, Q.C., and Adam. Agents—Mackenzie & Kermack, W.S.

Counsel for Mrs Scott and her Curator *ad litem*—Lord Advocate (YOUNG), Q.C., and M'Laren. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Truster's Widow and the Trustees—W. A. Brown. Agents—Richardson & Johnston, W.S.

Thursday, January 16.

SECOND DIVISION.

[Lord Gifford, Ordinary.

LOCALITY OF KILMORACK—CAMERON *v.*
CHISHOLM-BATTEN.

Teind—Surrender.

Where an heritor had obtained a valuation of his teinds, but for a period of more than

forty years prior to the decree of valuation had paid a sum above the amount of the valuation—held entitled to surrender the valued teind, and liable to pay no more than the valuation.

Previous to 1863 the lands of Aigas were held with the teinds unvalued. In 1817 these lands had been localised upon for stipend to the minister for £40, being one-fifth of the proven rental of the lands; and this sum was paid as stipend by the heritor for forty years afterwards. In 1863 Mrs Chisholm-Batten obtained a decree of valuation of her teinds in absence, the same being valued at £32, 2s. 6d. four-fifths per annum; and the said decree stands unreduced. For some years after the valuation the minister accepted the valued teinds, but he says he was unaware of his rights; and in 1868 he raised an action for the full sum of £40 allocated in 1817, and in this he was successful. The Court held, that notwithstanding the valuation, and notwithstanding a conditional reduction of the locality following thereon, the old locality of 1817 must subsist as a rule of payment till the settlement of a new locality.

In these circumstances a new process of augmentation, &c., was brought on 28th January 1867, in which the present final locality is being settled, and the question is for what sum Mrs Chisholm-Batten's lands should be localised upon in the final locality in this process. Mrs Chisholm-Batten has surrendered her valued teinds, and she insists that she should not be localised upon to any greater extent. The minister objects to this surrender, and maintains that in respect of prescriptive payment Mrs Chisholm-Batten must still be localised on for £40, notwithstanding the decree of valuation.

The Lord Ordinary pronounced the following interlocutor:—

“*Edinburgh, 12th November 1872.*—The Lord Ordinary having heard parties' procurators on the question between Mrs Chisholm-Batten of Aigas and her husband and the Reverend Donald Cameron, and having considered the record closed between the said parties on 24th May last, decret of valuation founded on by Mrs Chisholm-Batten, and whole process,—Sustains the revised condescendence and surrender for the said Mrs Chisholm-Batten and her husband of the whole teinds, parsonage, and vicarage, of her whole lands, embraced in the decret of valuation of 19th March 1863, amounting, the said valued teinds now surrendered, to the annual sum of £32, 2s. 6d. four-fifths of a penny, all conform to said decret of valuation and revised surrender, No. 47 of process: Finds that, in respect of said lands and of the surrender of teinds now sustained, Mrs Chisholm-Batten and husband fall to be allocated upon in the final locality now being made up, only for the said sum of £32, 2s. 6d. four-fifths of a penny sterling, being the valued teind of her said lands, and remits to the Clerk to rectify the locality accordingly: Finds Mrs Chisholm-Batten and husband entitled to expenses in the present question, but subject to modification; and remits the account thereof when lodged to the Auditor of Court to tax the same, and to report.

“*Note.*—The circumstances of this case are in some respects peculiar, and the point raised does not seem to be governed by any reported case, or by any authority precisely applicable.

“ Previous to 1863 the lands of Aigas and others,