

Thursday, July 17.

FIRST DIVISION.

[Lord Shand, Ordinary.]

SIR JAMES FERGUSSON OF KILKERRAN,
BARONET, PETITIONER.

Improvement of Land Act 1864, 27 and 28 Vict. cap. 114.

This was a petition by Sir James Fergusson, for authority to proceed with an application under the Improvement of Land Act 1864. The petitioner is heir of entail in possession of the lands of Kilkerran and others. By section 18 of the Act it is provided that the Improvement Commissioners shall not "make any provisional or other order, sanctioning the improvement of any land, in the case of which the landowner or the husband of the landowner shall be the father of the person or persons entitled, either at law or in equity, to any estate in such land, or any part thereof, in reversion or remainder, up to and inclusive of the person entitled to the first vested estate of inheritance, and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, unless or until such an order (of sanction) as hereinafter mentioned shall be made by such Court (the English or Irish Court of Chancery, or the Court of Session) as aforesaid." The Improvement Commissioner's Inspector, Mr A. Jardine, having reported that the proposed improvements, consisting of drainage, building of workmen's cottages and farm steadings, and planting for shelter, would in his opinion add to the permanent yearly value of the estate an amount exceeding that of the yearly amount proposed to be charged thereon in respect of the improvements applied for, the petition came before the Lord Ordinary (Shand,) who made a remit to Mr H. B. Dewar, S.S.C., who reported in favour of granting the application. The Lord Ordinary thereupon reported the matter to the First Division, who granted the prayer of the petition.

Petitioner's Counsel—Marshall. Agents—J. & T. Anderson, W.S.

ROBERT VANS AGNEW, PETITIONER.

This was a petition of a precisely similar nature to the above, for authority to subscribe for shares in the Wigtownshire Railway Company. The procedure was the same, and the Court granted the application.

Counsel—Campion.

Agents—Tods, Murray, & Jamieson, W.S.

Friday, July 18.

FIRST DIVISION.

[Lords Gifford and Mackenzie.]

FOGO *v.* COLQUHOUN.

Teind—Surrender—Over-payment—Prescription.

An heritor holding certain lands in a parish the teinds of which had been valued,—held no entitled, by a surrender of his teinds, to free himself of the obligation to continue cer-

tain overpayments which had been in use to be made to the minister during the period of prescription.

This was a case which arose in connection with the locality of the parish of Row. Sir James Colquhoun, Baronet of Luss, sought to surrender his teinds. The minister objected.

The following interlocutors were pronounced:—

"*Edinburgh, 4th July 1871.*—The Lord Ordinary having heard parties' procurators, and having considered the condescendence and surrender for Sir James Colquhoun of Luss, Bart., and the answers thereto for the Reverend John Lawrie Fogo, minister of Row, Nos. 65 and 66 of process, with the old localities and proceedings—Finds that for a period greatly exceeding forty years the condescender, the said Sir James Colquhoun, and his predecessors and authors, have, under final decrees of locality, paid to the successive ministers of the parish of Row amounts of stipend considerably exceeding the amount of the value of the teinds contained in the decrees of valuation held by the said Sir James Colquhoun and his predecessors and authors, and now proposed to be surrendered: Finds, in point of law, that the minister of Row, for himself, and his successors in office, has by such prescriptive over-payments acquired a right to insist that said payments shall be continued, notwithstanding the decrees of valuation: Finds that the said Sir James Colquhoun is not entitled by surrendering his teinds to free himself from the obligation to continue to make the over-payments in the same way as has been done during the prescriptive period, and decerns: And before further answer, appoints the cause to be enrolled, with the view of ascertaining the precise amount of the prescriptive over-payments, reserving meantime all questions of expenses.

"*Note.*—It was quite fairly and candidly admitted by the counsel for Sir James Colquhoun that his object in insisting in a surrender in terms of his condescendence and surrender, No. 65 of process, was to free himself in future from all over-payments of stipend, and that notwithstanding that such over-payments had been made under final decrees of locality for a period greatly exceeding forty years.

"It was not disputed that such over-payments had been made for more than forty years, although their precise amount was disputed, and thus the question of law was fairly raised, whether Sir James Colquhoun, by now surrendering the exact amount of his valuations, can now get rid of such over-payments in all time coming.

"There was a subordinate question, whether, even supposing that the over-payments are still to continue, Sir James Colquhoun may still, notwithstanding, surrender his valued teind, subject to the continuance of the over-payments. This question, however, is of little importance, being rather a question of form than of substance, and at most only affecting Sir James' liability for a share of the expenses of future localities.

"The Lord Ordinary is of opinion that, by reason of the prescriptive over-payments under final decrees of locality, the minister has acquired a right thereto, and that the heritor is not entitled to shake himself free of his liability by surrendering the mere amount of his valued teind. The Lord Ordinary has thought it better to decide this important point of law by substantive findings, rather than by sustaining the surrender under a