

LORD DEAS—I am clearly of opinion that this claim does not fall within the 103d section of the statute. The words cannot be repeated without seeing that. This single ground disposes of the case, and I am not inclined to go into the point raised by the Lord Ordinary in his note, without necessity. The question is a very serious one, but until it is properly raised on the merits I do not say what my opinion on it is.

LORD MURE—I am of the same opinion. It is a difficult question how far salaries like the present are assignable or attachable, but it is not necessary to determine it here, because this bankrupt was teacher in the school at the date of the sequestration, while the 103d section contemplates new estate only. I am quite clear therefore that the present petition is not within the 103d section.

LORD SHAND—I am of the same opinion. The bankrupt was teacher at the date of the sequestration. It is not disputed that he held office *ad vitam aut culpam*, and had the right to draw all future emoluments. Therefore, if the trustee has any claim he has it in virtue of the sequestration and not in virtue of the 103d section. But if he goes further he will be met, in the first place with the difficulty dealt with by the Lord Ordinary, and secondly, there is the consideration whether, looking to the circumstances and position of the bankrupt, £200 a year is an excessive amount for the maintenance of himself and his family.

The Court adhered.

Counsel for Petitioner (Reclaimer)—Strachan. Agent—W. Officer, S.S.C.

Counsel for Respondent—Salvesen. Agents—Boyd, Macdonald & Co., S.S.C.

Saturday, July 9.

FIRST DIVISION.

[Lord Rutherford Clark,
Ordinary.

MACPHERSON v. MURRAYS.

Process—Reclaiming—Decree Assolviating Defender where Pursuer is Absent and Defender has been Appointed to Lead in a Proof—Ill-health assigned as Ground of Absence.

This was an action of count and reckoning by a lady against her law agents, and related to certain sums of money which she alleged had come into their hands in order to carry on a litigation on her behalf. After a variety of procedure the Lord Ordinary (RUTHERFURD CLARK) pronounced this interlocutor:—"The Lord Ordinary having heard parties, Allows them a proof of their respective averments, the defenders to lead; grants diligence at the instance of both parties for citing witnesses and havers; and appoints the proof to proceed before the Lord Ordinary upon Thursday, the 16th day of June next, at 10 o'clock forenoon." Thereafter, on the 16th June, the following interlocutor was pronounced:—"The

Lord Ordinary, in respect of no appearance made for the pursuer, Finds it unnecessary to proceed with the proof allowed by interlocutor of 13th May last: Therefore discharges the order for proof, assolviates the defenders from the conclusions of the summons, and decerns." The pursuer reclaimed. NEVAY for her produced a medical certificate, and stated that being an old woman, over seventy years of age, bedridden, and in poor circumstances, she had been unable to attend to her interests in the litigation. In any case, the defenders were appointed to lead the proof, and had failed to do so. [The LORD PRESIDENT observed that the defenders, as pursuers of the issue, might either lead proof or not, as they preferred]. The defenders replied—The medical certificates merely bore that the pursuer was an old woman, and, besides, her personal attendance at the proof was not necessary. The Court refused the reclaiming note.

Counsel for Pursuer (Reclaimer)—Nevay. Agent—R. Broatch, Solicitor.

Counsel for Defenders (Respondents)—Lang. Agents—J. & W. C. Murray, W.S.

Saturday, July 9.

SECOND DIVISION.

SPECIAL CASE—DUNCAN'S TRUSTEES v.
DUNCAN AND OTHERS.

Settlement—Marriage-Contract.

A husband and wife in their daughter's marriage-contract bound themselves to pay to the marriage-contract trustees one-fifth of the free residue of the estate of each of them remaining after satisfaction of onerous obligations, the said share to be payable on the lapse of six months after the death of the longest liver of them. The husband thereafter died leaving to his widow a liferent of his whole estate. Held that the widow was entitled to a liferent of the whole estate, and that the daughter's marriage-contract trustees had no claim to the principal or interest of one-fifth of her father's estate till after the death of the widow.

James Duncan, W.S., Edinburgh, died on 27th September 1874, survived by a widow, two daughters, and one son, James Barker Duncan, W.S. He was also survived by three grandchildren, the family of a daughter Mrs Millar, who predeceased him. Mr Duncan had in 1865 been a party, as had also Mrs Duncan, to the marriage-contract of Mrs Millar. In that marriage-contract Mr and Mrs Duncan with mutual consent bound themselves to convey and make payment to the marriage-contract trustees acting for the time of "one-fifth part or share of the free residue of each of them remaining after satisfaction of onerous obligations, the said share to be payable on the lapse of six months after the death of the longest liver of the said James Duncan and Mrs Christian Duncan." It was then declared that the said share should be liferented by Mrs Millar and by her husband if he survived her, and that the fee should belong to the child