Monday, July 18.

TEIND COURT.

(Before the Lord President, Lords Deas, Shand, Craighill, and Lee.)

LORD PROVOST, MAGISTRATES, AND TOWN COUNCIL OF THE CITY OF EDINBURGH (LOCALITY OF ST CUTHBERTS)—PETITIONERS.

Teinds—Process—Citation—A. S. July 5, 1809.

A Lord Ordinary having approved of a rectified scheme of locality as final, and having thereafter approved of the Auditor's report and decerned for expenses, and extract having been issued, an error was discovered in the said scheme, certain lands belonging to the City of Edinburgh having been twice entered therein and localled upon under different classifications. The magistrates accordingly proposed to raise an action of reduction of the said final decree of locality, and as preliminary thereto they petitioned the Court to dispense with the ordinary mode of citation of the heritors (of whom there were 1075), the cost of service on whom in the ordinary mode was estimated at about £250, besides agent's fees and other expenses, and to allow instead citation by means of public notice given by the precentor in kirk, and notice on the kirk door, and subsequent newspaper advertisements, in the manner prescribed by the Act of Sederunt, July 5, 1809, in regard to the raising of actions of augmentation. The Court *granted* the prayer of the petition.

Counsel for Petitioners — Mackay. Agent—Wm. White Millar, S.S.C.

Tuesday, July 19.

FIRST DIVISION.

SAWERS *v.* PENNEY (SAWERS' TRUSTEE).

Judicial Factor—Bankrupt.

Peter Russell Sawers was liferenter of the estate of Craigingall and others under the trust-disposition and settlement of his uncle Peter Sawers. He was also one of several trustees named by the said deed. On 25th May 1881 he executed, under decree of the Sheriff of Midlothian, a disposition *omnium bonorum*, by which he conveyed all his heritable and moveable estate whatsoever to J. C. Penney, C.A., as trustee for behoof of his creditors. The Court subsequently, by a decree pronounced in absence on 4th June 1881, on a petition by Mr Penney, removed Mr Sawers and the said other surviving trustee under the said trust-disposition (who had become insane) from their office of trustee, and appointed Mr Penney judicial factor on the estate.

This was an application by Mr Sawers for recall of the sequestration and of Mr Penney's appointment, and for his own restoration as trustee. He averred, *inter alia*, that "the free rental of the estate was about £600." Mr Penney in his answers denied this, and averred that the estate was, owing to the fault and gross mismanagement of the petitioners, in the last stage of dilapidation, and would, if no factor were put upon it, soon cease to yield a rental at all. He submitted that the fact of the petitioner's bankruptcy, though not an absolute bar to his filling the office of trustee, was a strong element towards his disqualification.

The Court before answer remitted to Mr Dickson of Saughton Mains to inquire into the actual condition of the estate in question, and to report.

Counsel for Petitioner — Party. Agent — Andrew Clark, S.S.C.

Counsel for Respondent—Dundas. Agents—Dundas & Wilson, C.S.

Tuesday, July 19.

FIRST DIVISION.

MACDONALD *v.* MACDONALD.

Process—Petition—Aliment—Competency of Petition to Restrict Aliment.

It is competent for a husband to proceed by petition in order to have the amount of aliment payable by him under a decree of separation and aliment restricted.

On 29th November 1876 Mrs Mary Hume or Macdonald obtained decree of separation from her husband, with aliment at the rate of £40 per annum, payable half-yearly at Whitsunday and Martinmas. Macdonald was in business in Glasgow as a tailor, and he now alleged that he was unable to continue paying aliment to the amount decerned for owing to the depressed condition of his business, and that having failed to pay the amount due at Whitsunday last he was imprisoned in virtue of an extract-decree obtained by Mrs Macdonald. In these circumstances he presented this petition, in which he prayed the Court "to allow the petitioner a proof of his averments, if that should be found necessary, and to restrict the aliment to be paid by the petitioner to his said wife to £15 per annum as from and after Whitsunday last, and to find that the petitioner is only bound to pay aliment at said rate as from and after Whitsunday last, and to grant warrant for liberating the petitioner, reserving right to the petitioner or his said wife to apply to the Court to alter the rate of aliment if any change of circumstances should supervene; and to find the said Mrs Mary Hume or Macdonald liable in expenses in the event of her appearing to oppose the prayer hereof; or otherwise, to order the Deputy-Clerk Register, or other custodier thereof, to transmit the process in said action to the clerk at Lord Rutherfurd Clark's bar, and to remit this petition to Lord Rutherfurd Clark to proceed further herein as may be just; and meantime to grant interim warrant of liberation, and to decern."

Mrs Macdonald lodged answers, in which she denied that the petitioner's circumstances were so reduced as to make it impossible to continue