

Friday, Nov. 17.

FIRST DIVISION.

ADV. — DINGWALL *v.* CAMPBELL'S
TRUSTEES.

Counsel for Mr Dingwall—Mr Gordon and Mr Gifford. Agents—Messrs MacRitchie, Bayley, & Henderson, W.S.

Counsel for Campbell's Trustees—The Solicitor-General and Mr Cook. Agents—Messrs Hill, Reid, & Drummond, W.S.

The Court gave judgment in this case to-day, holding that Mr Dingwall, the vassal, was entitled to relief from his superiors, both of augmented stipend and of poor rates. It was not quite clear that the Court were entitled to decide the question as to the poor rates, on the record as it stood, but both parties concurred in consenting that the Court should decide it also.

The LORD PRESIDENT said—These counter-actions of pointing the ground have been decided by the Sheriffs of Fifeshire on grounds which, it is now conceded, are not tenable. They sustained certain pleas stated by the superiors against the vassal's claim to relief on the ground that he was not in right of that claim. The judgment since given by the House of Lords in the case of Sir William Stewart against the Duke of Montrose is conclusive as to that matter. The question which we have now to deal with is substantially whether the vassal is entitled to the relief which he seeks. His claim is rested on the terms of the feu-disposition of 1780, the position of the parties at the time, and their actings under it since. The clause of relief in the disposition is of very wide application, and certainly gives relief from many public burdens which would otherwise affect the lands. It is to be kept in view that the disposition bears to alienate not only the lands of Tarvitmill, but also the teinds, and, in addition, other lands in warrandice. One of the burdens from which relief is given is minister's stipend. The vassal says this comprehends augmentation of stipend since 1780, as well as stipend then exigible. The superiors say it does not import relief from augmentations, and this especially in the case of a deed which conveys the teinds as well as the lands. There is a question whether or not the teinds are actually conveyed. It is said the granter of the feu-disposition had no power to convey them. This is disputed, and it is clear, at all events, that the deed professes to convey them, and this may be sufficient for us in order to ascertain what the parties intended. We must look to the whole deed and judge of its fair meaning. It is remarkable that it sets out with a very comprehensive statement of what was intended—viz., that the lands were to be held by the vassal "free of all burden whatever other than the feu-duties." It is reasonable that we should construe the subsequent clauses in connection with this. So reading the deed, I think we must hold the clause as applicable to augmented stipend. Such a reading is consistent with the declared object of the deed. But, further, we have had an inquiry into the construction put by the parties themselves upon the deed. This was considered all-important in previous cases of the kind. It is clear from the evidence which has been led that the usage under the disposition supports the construction of it to which I think it is fairly entitled. Then, as to the poor rates I think the vassal is also entitled to relief of them under the clause. Were the question an open one, I might have wished farther argument upon it, but I think it has been decided by the Second Division in the case of Hunter, and I see no sufficient reason to disturb that decision.

LORD CURRIEHILL arrived at the same result, but on somewhat different grounds. His Lordship founded not so much on the obligation to relieve the

vassal of "minister's stipend" as on the obligation to relieve him also of "teind duties." This meant that the superiors were to relieve the vassal of all duties claimable by any one in respect of the teinds. One of these was the payment of stipend so far as already fixed, but another was the payment of the surplus to the titular of the teinds. This necessarily included augmentations; for these just implied a transference of the teinds from the titular to the minister to the extent augmented. He also founded on the fact that his view was confirmed by usage.

LORD DEAS concurred with the Lord President, and founded on the fact that relief was given from all minister's stipend imposed *or to be imposed*, in a deed which declared that the subjects were to be held free of *all* burdens but feu-duties. The previous decisions were not easily reconciled, but they all bore to proceed on the intention of the parties, which his Lordship held was here apparent, not only on the face of the deed, but also from the actings of the parties under it.

LORD ARDMILLAN concurred, and proceeded on a combined view of the grounds stated by Lord Curriehill and those stated by the other Judges.

STEUART *v.* MOSSEND IRON CO., *et e contra.*

Counsel for Mr Steuart—Mr Gordon and Mr Broun. Agent—Mr Thomas Sprot, W.S.

Counsel for Mossend Iron Company—The Lord Advocate, Mr Hector, and Mr Lee. Agents—Messrs Hamilton & Kinneir, W.S.

Mr Robert Steuart of Carfin raised an action in 1858 against the Mossend Iron Company for the purpose of having it declared that a certain writing, subscribed by him and them in 1857, formed an effectual contract of lease betwixt them of minerals in the lands of Carfin, and also for implement and damages. The matter as to which parties were at issue was to what was the precise boundary of the mineral field leased, the iron company averring that when they signed the writing they were under essential error as to the boundary. In 1864, Mr Steuart lodged issues which he proposed for the trial of the case, but the Court, at the discussion of them, intimated that in order to maintain their allegations of essential error, it would be necessary for the iron company to raise a reduction of the lease on that ground. This action was accordingly raised. Mr Steuart pleaded as a preliminary defence that the action was incompetent, in respect the parties had in the other action renounced probation on the question whether a binding lease had been entered into. Lord Ormisdale reported the case at this stage, and to-day the Court, after hearing Mr Archibald Broun, repelled the preliminary defences, and remitted to the Lord Ordinary to proceed with the case.

SECOND DIVISION.

MACLAREN *v.* THE CLYDE NAVIGATION
TRUSTEES. MACLAREN *v.* HARVEY.

Counsel for the Pursuer—Mr Patton, Mr Gordon, and Mr Marshall. Agents—Messrs J. & G. H. Gibson, W.S.

Counsel for the Defenders—The Solicitor-General and Mr Shand. Agent—Mr Simon Campbell, S.S.C.

These cases, which involve the same point—viz., the liability of the Clyde Trustees and others to pay a share of the assessment imposed by the heritors of Renfrew for the purpose of rebuilding the parish church there, were reported in our columns at the time of their hearing during the extended sittings. They were advised to-day.

LORD NEAVES delivered the opinion of the Court to the following effect:—This case has been found to be attended with difficulty; but on a careful consideration the Court have come to be of opinion that the interlocutor of the Lord Ordinary