

for conference, and the following minute was adopted and signed :—

“The parties agree to settle the case in the following terms :—

“1. The defender to pay the pursuer 100 guineas of damages, with expenses to and inclusive of this date, as the same shall be taxed.

“2. Any claim which may now be competent to either party against the other for any assault or defamatory words is discharged.

“3. The pursuer's lease of the farm of Innergeldie to be adjusted at the sight of Donald Mackenzie, Esq., advocate, and all questions now existing between the pursuer and defender, as tenant and landlord respectively of said farm, to be referred to the said Donald Mackenzie.

“4. The interdict case now depending in the Sheriff Court of Perthshire to be referred to the said Donald Mackenzie.”

In consequence of the above agreement the jury were discharged.

Counsel for Pursuer—Mr Young and Mr A. Moncrieff. Agents—Hill, Reid, & Drummond, W.S.

Counsel for Defender—Mr A. R. Clark and Mr Gifford. Agent—James Webster, S.S.C.

## COURT OF TEINDS.

Wednesday, March 13.

KERR v. HERITORS OF YESTER.

*Augmentation of Stipend—Decimae Inclusae Right.*

Circumstances in which held that an heritor had not shown such a *prima facie* case of possession under a *decimae inclusae* title as to justify the refusal of an augmentation.

This was an application by the minister of the parish of Yester for an augmentation of his stipend.

GIFFORD and WEBSTER, for the Marquess of Tweeddale, one of the heritors, objected to any augmentation being granted, on the ground that the only lands in the parish which the minister pretended were unvalued were held by him under a title *cum decimis inclusis*. He founded on (1) a charter dated 9th May 1592, by “Walter Hay, provost of the collegiate church or provostrie of Bothanes, with advice and consent of James Lord Hay of Yester, patron of the said collegiate church, and of the other prebendaries thereof,” whereby he gave, granted, &c., to William Hay certain lands “*una cum decimis earundem inclusis que ab invicem nunquam separari solebant* ;” (2) a charter or disposition, dated 10th May 1592, whereby the said William Hay sold the said lands to James Lord Yester; and (3) a Crown charter of confirmation, dated 26th September 1592, whereby the before mentioned charters are ratified. The present Marquess is heir-male of Lord Yester, and he founded upon possession of the lands, without payment of minister's stipend, since 1592.

WATSON, for the minister, argued, that the deeds produced did not instruct a good *decimae inclusae* title. The words “*et nunquam antea separatis*” did not occur in the charters. Such a title can only be held when it has flowed from the regular clergy, which is not the case here.

The Acts 1567, c. 12, and 1592, c. 161, were referred to, as also the following authorities :—Ersk., 1, 5, 3; Officers of State v. Stewart, 20th July 1858, 20 D. 1331; Locality of Caputh, 3d June 1864, 2 Macp. 1133; Locality of Alyth, 7th

Feb. 1810, F. C.; Locality of Carmylie, 23d May 1810, F. C.; and Lord Dundas, 22d June 1823, Shaw's Teind Cases, 41.

At advising,

The LORD PRESIDENT—The only question which we have to determine at present is, whether an augmentation shall be granted, or whether the heritor has shown such a *prima facie* case of the possession of a *decimae inclusae* right as to justify us in refusing the augmentation at once. The Court are all satisfied that the heritor has not shown such a *prima facie* case, and that the augmentation should proceed as if the objection had not been stated.

The stipend was modified at 18 chalders, leaving the question raised to be determined in the locality.

Agents for Minister—W. H. & W. J. Sands, W.S.

Agents for Marquess of Tweeddale—Gibson-Craig, Dalziel, & Brodies, W.S.

## COURT OF SESSION.

Thursday, March 14.

### FIRST DIVISION.

ALLANS v. TEMPLETON.

*Restitution—Issue—Criminal Accusation.* A pursuer is bound to put in issue the case he avers on record; therefore, in an action for restitution of money said to have been obtained by means of theft and forgery, the pursuer having proposed an issue not containing these accusations, issue disallowed and action dismissed.

This is an action at the instance of Margaret Linn Hope or Allan, wife of John Allan, residing at Livingston, near Mid-Calder, the said John Allan, and Margaret Linn, residing with him, against Marian Templeton, Over-Dalserf, near Carluke. It concludes for payment of £134, 7s. 1d., and for £100 “as the loss and damage which the pursuers have sustained through the defender having fraudulently and illegally abstracted or stolen a deposit-receipt for £133 sterling, granted by the Bank of Scotland to the pursuer, Margaret Linn Hope or Allan, dated 13th May 1862, uplifted the contents thereof, and retained or applied the same to her own purposes.”

The following averments set forth the pursuers' grounds of action :—

“Cond. 4. The pursuer, Margaret Linn, lives in family with the other pursuers, John Allan and Margaret Linn Hope or Allan, and has a chest in their house in which she keeps her articles of wearing apparel, &c. The said deposit-receipt was always kept in the said chest. In November 1862 the defender paid a visit to the pursuers. During that visit the defender had access to Margaret Linn's chest, in which she (the defender) had been allowed to place several articles of her own, and she took the opportunity of abstracting or stealing the said deposit-receipt therefrom.”

“Cond. 6. Thereafter the defender forged the signature of the pursuer, Margaret Linn Hope or Allan, by writing the name ‘Margaret Linn Hope’ across the back of the said deposit-receipt. She did so without the sanction, authority, or knowledge of the pursuers, or any of them. The defender thereupon presented the said deposit-receipt, with the said forged indorsation thereon, for payment at the office of the City of Glasgow