cause the possessory period fell short of three months; (4) because the evidence of possession depended exclusively on the testimony of two men, the sons of the petitioner, who were utterly unreliable, they having caused the removal of the march stone, and their evidence being in itself contradictory.

CLARK and GEBBIE in answer—The case does not, as contended for by the respondent, depend entirely upon two witnesses. It is competent, dealing with the question as a possessory one, to go beyond the period required to set up the case, and to look to the original formation of the ditch. Upon that point it is proved by evidence which has not been impeached on any other ground than its unreliability, as being given by relatives of the petitioner, that the ditch was originally made by ground taken from both properties. It is not necessary to prove continuous possession, year by year, during the possessory period. If acts of possession are found to have taken place continuously during the period, that will be sufficient.

The Court adhered to the interlocutor of the Lord Ordinary, accepting as worthy of belief the evidence given by the petitioner's daughters as to the formation of the ditch, and holding that the formation of the ditch and its history were to be taken into account in construing the subsequent possession, and that it was not necessary that there should be no interruption for any time during the possessory period, but that possession was sufficiently established if acts of possession were done during the requisite period. There was some suspicion, certainly, attachable to the petitioner's sons in the removal of the stones, but that was not sufficient to invalidate their evidence as to the possession of the ditch.

Agents for Advocator—Macgregor & Barclay, S.S.C.

Agents for Respondent—Scott, Moncrieff, & Dalgetty, W.S.

COURT OF TEINDS.

Wednesday, December 4.

MINISTER OF LOGIE *v.* HERITORS.

Teinds—Augmentation—Communion Elements. £12 granted for communion elements, the population of the parish being 4000.

The minister of Logie, with a present stipend of 18 chalders, obtained, of consent, an augmentation of 3 chalders.

DUNCAN, for him, asked a sum of £15 for communion elements, the population of the parish being close upon 4000; and it being the practice of the Court, he stated, to grant an allowance of £15 when the population was between 3000 and 5000.

The heritors neither consented nor opposed.

The Court granted £12.

Agents for Minister—Adamson & Gulland, W.S.

Wednesday, December 4.

MINISTER OF KILMORACK *v.* HERITORS.

Teinds—Augmentation—Valuation. An objection being stated in an augmentation that the teinds were exhausted, the precedent of *Kilbirnie* followed, and procedure sisted to allow minister to bring a declarator.

The minister of Kilmorack asked an augmentation.

CLARK, for heritors, objected, on the ground that there was no free teind. The teinds had been exhausted since 1816, and the proper course to follow was that adopted in the case of *Kilbirnie*, 18th December 1866, where procedure was sisted in order that the minister might bring a declarator.

WATSON, for the minister, contended that this was not a question as to the validity of the decrees of valuation, but merely as to their extent, as in the *Banchory-Devenick* case.

The Court followed the case of *Kilbirnie*, and sisted procedure.

Agents for Minister—M'Ewen & Carment, W.S.

Agents for Heritors—Gibson-Craig, Dalziel, & Brodies, W.S.

COURT OF SESSION.

Thursday, December 5.

FIRST DIVISION.

A. *v.* B.

Diligence—Inhibition—Small Debt Act—Debts Recovery Act. Held that inhibition was incompetent on a decree under the Small Debt Act, 1 Vict., c. 41, and therefore incompetent on a decree under the Debts Recovery Act 1867, 30 and 31 Vict., c. 96.

This was a bill for letters of inhibition on a decree and charge under the Debts Recovery Act 1867, 30 and 31 Vict., c. 96.

LORD MURE doubted the competency of the application, and therefore reported to the Court.

PATTISON for the petitioner.

The Court took time to consider their judgment.

At advising,

LORD PRESIDENT—This bill sets out that the complainer, on 10th November 1861, raised an action against the defender before the Sheriff of Dumfries to recover payment of £17, 14s. 3d., being the amount of an account; and in that action, he says, he obtained decree on 22d November for payment of the amount, with expenses; and, on 22d November, he caused an officer of court to give a charge to the defender for payment on that decree, and he now asks letters of inhibition on this decree and charge. The question is, Whether a decree obtained under the Debts Recovery Act 1867, and a charge on that decree, can be a warrant for letters of inhibition? but that depends, in the first instance, on whether letters of inhibition could competently issue on a decree obtained under the Small Debt Act, 7 Will. IV., and 1 Vict., c.

As regards decrees obtained under the former Act—the Small Debt Act—the Court are of opinion that letters of inhibition cannot competently proceed on such decree, and that the practice which has hitherto prevailed, of refusing to issue such letters, is correct. That statute provides expressly every right that the pursuer of a small debt action is to have in virtue of the statute and decree. The form of summons, the manner in which it is dealt with, the procedure in the action, the form of decree, are all provided expressly; and, in particular, it is provided that, on the extract decree, execution

shall proceed by arrestment, poinding and sale, and imprisonment where the sum is of sufficient amount as otherwise to make imprisonment competent. The express provisions in that Act appear to us to exclude the pursuer of such an action, or the holder of such a decree, from diligence against heritable estate. The jurisdiction was created by statute, and the manner in which it was to be exercised, and the whole effects, are expressly laid down.

In the Debts Recovery Act it is provided in three different sections—the 9th, 11th, and 12th—all of which relate to decrees under the Act, that the Sheriff may pronounce a judgment, and the decree shall be extracted, as nearly as may be "in the same mode, and shall have the same force and effect, and be followed by the like execution and diligence as a decree obtained under the 13th section of the Small Debt Act." Now that seems to us to fix conclusively that no diligence or execution can follow under the Debts Recovery Act that might not competently follow under the Small Debt Act. We shall therefore instruct the Lord Ordinary to refuse the bill.

The other Judges concurred.

Agent—James Somerville, S.S.C.

Thursday, December 5.

SECOND DIVISION.

LINDSAY (LAURIE'S TRUSTEE) *v.* BEVERIDGE, ETC.

Bankruptcy—Illegal Preference—Act 1696, *c.* 5. A party purchased certain articles, and obtained delivery, but did not pay the price. The seller, some time after, and in the knowledge of the pursuer's insolvency, then presented a petition to the Sheriff praying for re-delivery of the articles. The buyer entered appearance, and then wrote a letter to the seller, within sixty days of bankruptcy, abandoning his defence, and saying that he might have the articles by sending for them. The Sheriff gave decree in terms of the prayer of the petition. *Held* that both the letter and the decree were illegal preferences, and reducible both under the Act 1696, c. 5, and at common law

The estates of William and Robert Laurie were sequestrated on 25th March 1865, and Mr Lindsay, the pursuer of this action, was appointed trustee. The bankrupts were tenants of the farm of Bellcoman, and also of Bankhead, to the latter of which they entered at Martinmas 1864. On the 28th of October 1864 the defender William Beveridge, acting on behalf of other parties, exposed for sale at Bankhead, by public roup, certain farm stock, &c. At this sale one of the bankrupts bought a horse, two cows, two rollers, and a boiler. The price of these together amounted to £43. He also bought a thrashing mill for £5 by private bargain. Delivery of the cattle was obtained at once, and of the thrashing mill at Martinmas, when the bankrupts entered on the farm. The bankrupts also purchased some manure for £20, which was left on the farm when they entered at Martinmas. No price was asked or paid for all these articles, notwithstanding a condition in the articles of roup that either money was to be paid, or a bill with a sufficient cautioner to be granted. On the 13th January 1865 petitions for sequestration for rent of the bankrupt's farms were presented to the Sheriff, and sequestration was granted. On the 5th of January Mr Beveridge had made the first application for payment of the cattle, &c., purchased from him. He then made an attempt to induce him to return the cattle, &c.; and, this demand not having been complied with, he presented a petition to the Sheriff, praying, *inter alia*, for restoration of the cattle, &c. The bankrupts entered appearance in this process. They were afterwards persuaded to sign a letter in the following terms:—"Bellyconan, by Dunfermline, 13th March 1865. Sir,—Referring to the petition at your instance against us for delivery of a horse and two cows, we beg to state that we have withdrawn our defence, and you may have the animals by sending for them.—Your obedient servants, (signed) Wm. and R. Laurie." The Sheriff, on 14th March, gave decree in terms of the prayer of the petition. Mr Beveridge sent and took away the cattle, &c. The present action concluded for reduction of the letter of 13th March, and of the decree of 14th March, and for delivery of the cattle, &c., or, in case of failure to do so, for their price.

The pursuer pleaded: The letter and decree foresaid having been granted and obtained in defraud of the bankrupt's creditors, and for the purpose of obtaining an illegal preference over the bankrupt's estate, confer no right on the defenders, and the pursuer is entitled to decree of reduction and declarator as concluded for. The said letter and decree being reducible, as preferences under the Act 1695, c. 5, the pursuer is entitled to decree of reduction as concluded for.

A proof was led before the Lord Ordinary (Barcaple), who found that the horse, cows, thrashing-mill, manure-rollers, and the boiler, mentioned in the conclusions of the summons, were, at the dates of the letter and decree sought to be reduced, the property of the bankrupts: that the said letter was granted by the said bankrupts within sixty days of their bankruptcy in favour of the defender William Beveridge, who was their creditor for the price of the horse, cows, and other articles in question, for satisfaction of his debt, in preference to their other creditors; that on 13th March 1865, when the said letter was subscribed by the bankrupts, they were, and were known by the defender to be, insolvent; that, for the purpose of carrying out and giving effect to the said letter and illegal preference, the said defender obtained the said decree; the bankrupts, in terms of the said letter, not insisting further in their defence against the application under which the same was produced: that the said letter was reducable under the Act 1696, c. 5, that the said decree having been obtained in the circumstances, and for the purposes foresaid, and contrary to the legal rights of parties in the property of the said horse, cows, and other articles, the same was reducible at Common Law; reduced, decerned, and declared in terms of the reductive and declaratory conclusions of the libel; and, in respect that the said horse, cows, and other articles had been sold by the defender, and could not be restored to the pursuer, decerned against the defender William Beveridge to make payment to the pursuer, as trustee on the sequestrated estate of the bankrupts, of the sum of £63, 15s. 5d., being the admitted price for which the same were sold. The Lord Ordinary, in his note, explained that the subjects were the property of the bankrupts, and, if so, he did not doubt that the letter was a document falling under the Act 1696, c. 5. He read it as an obliga-