

The Court unanimously adhered.

Agents—Morton, Whitehead, & Greig, W.S.;
M'Ewen & Carment, W.S.; Goldie & Dove, W.S.;
A. & A. Scott, W.S.

Tuesday, December 13.

DUNN'S TRUSTEES v. BARSTOW AND OTHERS.

Trust—Reduction—Multiplepointing—Fund in medio. A truster died, leaving to certain trustees large property, heritable and moveable, for certain purposes. A great number of claims having been made against the trustees, both under the trust-deed and at common law, the trustees brought an action of multiplepointing, in which the fund *in medio* embraced the whole estate of the deceased. Thereafter the heir-at-law of the truster brought an action of reduction of the trust-deed *ex capite lecti*, in so far as it disposed of a certain estate. He was successful in this action, and thereafter brought an action of count and reckoning against the trustees for the rents of said estate during the time they had administered it. *Held* that the proper course was to take the estate in question out of the fund *in medio*, as not being part of the trust-estate of which the trustees were administrators, and to proceed with the accounting in the action of count and reckoning, and not in the action of multiplepointing.

Agents for Pursuers—Murray, Beith, & Murray, W.S.

Agent for Defenders—Wm. Ellis, W.S.

Wednesday, December 13.

TRAQUAIR'S TRUSTEES v. HERITORS OF INNERLEITHEN.

Assessment—Annual Real Rent or Value—Heritors—Long Lease—Valuation-Roll. A heritor of a parish possessed lands let upon long leases for £80 per annum of *cumulo* rent, while the estimated annual rent or value of the lands was entered in the valuation-roll at about £1100 per annum. *Held* that an assessment laid upon the heritors of the parish for the purpose of rebuilding the parish church, according to the real annual rent or value of their lands, must be levied, not upon the actual rent received by the heritor under the long leases, but upon the estimated real annual rent or value as appearing from the valuation-roll.

This was an action of declarator at the instance of the trustees of the late Earl of Traquair against the whole other heritors of the parish of Innerleithen, for the purpose of having it judicially declared that the pursuers were not liable to be assessed for rebuilding the parish church of Innerleithen to a greater extent, in respect of certain lands belonging to them and let upon long leases, than the actual rent received by them under these long leases. The pursuers alleged—"A considerable portion of the village or town of Innerleithen, which has now become a place of large population, and is an important seat of the woollen manufactory in Scotland, consists of dwelling-houses

and other buildings erected on ground held on leases of ninety-nine years, some of which are renewable for ever, and on ground held on leases of longer duration, some being for 999, and some for 1000 years, granted from time to time in the course of the present and the latter part of the last century by the said Charles Earl of Traquair and his predecessors. No grassums were paid, and the rent stipulated for and now payable was that which at the time was taken to be, and was in fact, the true annual value of the subjects leased as building ground. Buildings, consisting partly of houses and similar structures, and partly of mills and public works, have been erected by the tenants on the lots of ground leased as aforesaid. The present yearly values of the said subjects largely exceed in every instance the rents payable to the pursuers. The tenants under said leases are proprietors of the subjects according to the provision in sect. 6 of the 17 and 18 Vict. c. 91, entitled 'An Act for the Valuation of Lands and Heritages in Scotland.'

In the valuation roll the pursuers are entered as of the lands let on long leases, and the rents payable to them are set forth. The roll also contains the yearly rent or value of the said subjects. The *cumulo* rents paid for the subjects to the pursuers amounted to £80, while the estimated *cumulo* annual rent or value, as entered in the valuation, amounted to £1100. The question was, which of these sums was the "real rent" upon which the pursuers fell to be assessed for the re-erection of the parish church?"

The Lord Ordinary (MURE) pronounced the following interlocutor and note:—

"2d June 1870.—The Lord Ordinary having heard parties' procurators, and considered the closed record and productions in the conjoined actions: Sustains the first plea in law for the defenders, and assoilzies them from the conclusions of the action, and decerns: Finds them entitled to expenses, of which appoints an account to be given in; and remits the same when lodged to the auditor to tax and report.

"*Note.*—It has been settled in the case of *M'Laren*, 17th November 1865, that tenants under leases for upwards of twenty-one years, even when entered in the valuation roll as proprietors, are not liable in assessment for the building of a parish church imposed upon heritors according to the real rent, because they are not heritors in the sense of the enactments under which such assessments are authorised to be made. Now it is not disputed that in the present case the assessment in question has been legally imposed according to the real rent; and the pursuers are admittedly heritors in the parish of Innerleithen, who are liable in that assessment. In these circumstances, the only question which appears to be here raised for determination is, whether the defenders, as contended for by the pursuers, have done wrong in assessing the pursuers in respect of ground given off under long leases upon 'the yearly rent or value' of that ground, as appearing from the valuation roll in force at the time, instead of upon the amount of rent actually drawn under those long leases, and which is entered in the valuation roll under the head of 'rent payable under such lease.'

"Upon considering the provisions of the statute, the Lord Ordinary has come to a conclusion adverse to the view thus maintained on the part of the pursuers. It may be that there are strong grounds in equity for holding that a proprietor,