

the railway station in Edinburgh on the 7th of the same month; find that the machine was on the 17th of February found to be defective in the centre web of the punching sheet, and that the defender then intimated to the sellers that he declined to accept delivery thereof; find that after some negotiation, during which the pursuers offered to cancel the contract, the parties agreed on the 27th and 28th of February that the defender, on the terms mentioned in the pursuers' letter of the 27th, should accept delivery and pay the price; find that this agreement related to the whole machine; find that on the 5th of March the defender intimated to the pursuers that the shearing part of the machine was defective, and that this defect has been proved; but find that the defender is precluded by the agreement of the 27th and 28th of February from rejecting the machine, or refusing to pay the price, on the ground of defects which were then apparent; therefore repel the defences, and decern against the defender in terms of the conclusions of the summons, and find him liable in expenses (with the exception of the expenses of the proof), subject to modification, reserving the question as to the amount thereof until the account is taxed, and remit to the Auditor to tax the expenses and to report."

Counsel for the Pursuers—Balfour and Brand.  
Agent—A. Kirk Mackie, S.S.C.

Counsel for the Defender—Guthrie Smith and Campbell. Agents—Macnoughten & Finlay, W.S.

Thursday, March 18.

FIRST DIVISION.

[Lord Craighill, Ordinary.

COFTON v. COFTON.

Proof—Court of Session Act 1868, § 15—Interlocutor Sheet.

Held that the provisions of the 15th section of the Court of Session Act of 1868, as to proving the tenor of a summons, petition, or other original writ or pleading, does not apply to an interlocutor sheet.

Friday March 19.

FIRST DIVISION.

[Lord Mackenzie, Ordinary

KENNY v. TAYLOR AND OTHERS.

Entail—Revocation—Substitute—Fee.

In 1816 a proprietor disposed his estate to himself in liferent, and to Ernest and the heirs-male of his body in fee, whom failing to Andrew and other substitutes under the fetters of a strict entail. The deed contained no disposition *hereditibus nominandis*, but reserved power to the grantor to alter the course of succession and gratuitously dispoise, declaring that all such alterations should be understood and taken as part of the entail, and should be as

effectual as if inserted therein. In 1828 the entailor executed a deed of revocation and new disposition, whereby, on the narrative of the deed of 1816, and of the reserved power therein, and that he had resolved to alter the course of succession therein contained so far as regarded Andrew and the whole other persons substituted, he disposed his estate to himself in liferent, and to Ernest in fee, whom failing to the heirs-male of his body, whom failing to the heirs-female of his body, whom failing to K— and the heirs-male of his body, whom failing to certain other substitutes, under the conditions, provisions, &c., contained in the said deed of entail, all which clauses (the procuratory of resignation and precept of sasine, and whole other clauses of that deed of entail) he thereby confirmed and assigned to his said dispoisees and heirs of entail—declaring that the said Ernest and persons substituted to him should be entitled to possess the said lands "under the foresaid deed of entail, and these presents, and under no other right or title whatever." This deed of revocation did not contain any of the fetters of entail and the whole substitutes, with the exception of Ernest and the heirs of his body, were different from those mentioned in the deed of entail of 1816. Held (1) that the deed of entail of 1816 was revoked and superseded by the deed of 1828; and (2) that in virtue of the latter deed, Ernest became fee-simple proprietor of the said estate.

This was an action of reduction and declarator at the instance of James William Gammell Kenny, late of the Honourable East India Company's Service, against Mrs Rosa Ann Bertram Gammell or Taylor and others, her trustees.

The following narrative is taken from the note of the Lord Ordinary (MACKENZIE);—

"By the disposition and tailie of 1816 James Gammell disposed to himself in liferent, and to Ernest Gammell and the heirs-male of his body in fee, whom failing, to Andrew Gammell and the other substitutes therein mentioned, under the fetters of a strict entail, the lands of Portlethen and others. The pursuer, Mr Kenny, is not one of these substitutes, and is not mentioned in the deed. There is no substitution in that deed of entail *hereditibus nominandis*. But the entailor thereby reserved power to alter the order and course of succession contained in the deed, and to revoke or alter all or any of the conditions, provisions, and irritancies therein contained, and to revoke the deed, and also to sell, burden, or even gratuitously dispose of the said lands as he might think proper, by writing under his 'hand,' which writing he provided 'shall be understood and taken as a part of this present deed of entail, and shall be as effectual to all intents and purposes as if the same had been inserted therein.'

"By the deed of revocation and new disposition of 1828 the entailor James Gammell, on the narrative of the previous deed of entail of 1816, and of the reserved power above mentioned, and that he had resolved to alter the course and order of succession therein contained, in so far as regards Andrew Gammell and the whole other persons substituted to Ernest Gammell and the heirs male and female of his body, revoked the said