

in the title-deeds or excerpts produced by the pursuer, for that has not been stated, and it does not appear that these title-deeds or excerpts had been seen by them before the surplus teinds in dispute were taken payment of by them, or indeed till they were produced by the pursuer in the present process at the conclusion of the proof.

I am therefore, without entering into further detail or a consideration of any more of the points which formed the subject of discussion at the debate, of opinion that the interlocutor of the Lord Ordinary ought to be adhered to.

LORD GIFFORD—I concur, and have nothing to add to the exhaustive opinions pronounced by your Lordships.

The Court adhered.

Counsel for Pursuer (Respondent)—Balfour—Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Lord Advocate (Defender and Reclaimer)—Solicitor-General (Macdonald)—Ivory. Agents—Murray, Beith, & Murray, W.S.

Counsel for other Defenders—Lee—Rutherford. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Saturday, March 2.

SECOND DIVISION.

SPECIAL CASE—BRUCE (BRYCE'S TRUSTEE)
AND OTHERS.

Husband and Wife—Jus administrationis where jus mariti excluded.

Held, where a husband's right over the bequest of an annuity was not excluded, but the *jus mariti* was, that the exclusion of the former was not necessarily to be implied, and that the husband must be a concurring party in any payments which were made to his wife; and *observed* that if he should refuse to concur, the Court, on cause shown, would authorise her to act without him, or name another curator.

Observed (*per* Lord Gifford), that the principle of the *jus administrationis* of a husband implies that it must be exercised solely for his wife's behoof, and to save her from being hurt by her own acts.

Succession—Conditio si sine liberis decesserit.

A testator in his trust-disposition left £100 to each of several nephews and nieces who predeceased him. In a codicil he left (1) £1200 "to the family" of one of these nephews, and (2) £500 to another nephew. He died unmarried, and his nephews and nieces or their children were, with the exception of a housekeeper and a natural son, the whole beneficiaries under his settlement. None of them were omitted, although they were not called as a class or equally favoured.

Held (1) that these provisions were cumulative; and (2) that the circumstances being such that the testator must be held to be *in loco parentis* to all his nephews and nieces, the

conditio si sine liberis applied, and that the children of those who had predeceased were entitled to take their parents' provisions.

Succession—Bequest in a Codicil of Residue Proportionally to Amount of Legacies Bequeathed—Jus mariti of Husband.

A testator having in his trust-deed left certain provisions to various parties, and in a codicil left them other provisions, which were held to be cumulative, stated further in the codicil that the residue of his estate was to be divided proportionally among "the above-named legatees and annuitants."—*Held* (1) that the beneficiaries under the deed and the codicil were entitled to a proportional share of the residue corresponding to the *cumulo* amount of their provisions under both deeds, and that the bequests of the liferent of a house and furniture and of annuities fell to be valued for that purpose similarly with pecuniary legacies; and (2) that when the *jus mariti* or right of administration of the husband of any female beneficiary was excluded with regard to the provision to her under the deed or the codicil, it was also excluded with regard to her share of residue.

Succession—Testament—Falsa demonstratio.

A testator left "£3000 to J. B., and to each of the other three children of my brother £2000." Her brother had in fact four other children, and the five were all specially named as sole residuary legatees in the residuary clause in the trust-deed.—*Held* that this was a case of *falsa demonstratio*, and that each of the four children was entitled to the legacy of £2000.

Counsel for the Parties—Dean of Faculty (Fraser)—Kinnear—H. Johnston—White—Maconochie, &c. Agents—George Bruce, W.S.—John Whitehead, S.S.C.—Hope, Mann, & Kirk, W.S., &c.

Tuesday, March 5.

FIRST DIVISION.

[Lord Rutherford Clark,
Ordinary.

MONTGOMERY (COMMON AGENT IN SOUTH
LEITH LOCALITY) *v.* SMITH SLIGO'S
TRUSTEES (HERITORS).

Teinds—Process—Locality—Objection to locality being approved final.

A rectified scheme of locality had formed the rule of payment for nearly three years, and was then approved final on the motion of one of the heritors. Against this interlocutor the common agent reclaimed, on the ground that it was his intention to allocate the stipend due from certain lands among some feuars who had acquired their rights since the date of the preparation of the interim scheme. The reclaiming note was *refused*.

Observations on delay in teind processes.