6 went on to say "that the Court shall in every case, in fixing the amount to be borrowed, add to it the actual or estimated amount of the cost of the application, and the proceedings therein, and of obtaining the loan and granting security therefor."

Argued for the respondent—It was not in the power of the Court to make the expenses of the application a charge on the estate in the manner prescribed in section 7, as that was limited to cases of entails dated prior to August 1848, and, secondly, the lands being in *forma specifica*, it was impossible to decern out of the estate. Further, the 12th section, subsec. 6, merely gave power to decern for the expenses of process, which would not include all the expenses allowed for in the 7th section, viz., the expense of raising the loan and granting security therefor.

At advising—

Lord President—The history of the question raised in the present reclaiming note as regards statute is this—Improvements of the nature of Montgomery Improvements, for which there is no decree in the terms of the Montgomery Act, may, under the 16th section of the Rutherfurd Act (11 and 12 Vict. cap. 36), be made chargeable on the estate, and the manner of so doing is there prescribed; but that enactment is confined to entails prior to 1st August 1848. It was by the subsequent Statute of 31 and 32 Vict. cap. 84 (Entail Amendment Act 1868), that the provisions of that section were extended to entails of a later date. That places all entails in the same position as regards the competency of charging improvements against the estate. So stood the matter till 1875. There was nothing in either of the preceding statutes regarding the expenses of the application or the expenses of raising the loan. But by the 7th section of the Act 38 and 39 Vict. c. 61 (Entail Amendment (Scotland) Act 1875), it is provided that on the application of an heir of entail in possession of an entailed estate holden by virtue of any entail prior to 1st August 1848, it shall be lawful for the Court to grant authority to such heir of entail to borrow money to defray the cost of improvements on such estate—and then follow certain subsections containing further provisions with regard to the power conferred by this section. One of these, No. 6, is as follows:—"In every case the Court shall, in fixing the amount to be borrowed under their authority, add to the actual or estimated amount of the cost of the improvements the actual or estimated amount of the cost of the application, and the proceedings therein, and of obtaining the loan and granting security therefor."

The 7th section, as I have said, applies only to cases of entails prior to August 1848, and there is no corresponding provision applicable to more recent entails; the subsection can only therefore apply in its terms to early entails, of which this is not one. The direct application of the section is accordingly out of the question.

But it is said that there is another section, viz., the 12th, under which the application may be granted. Now, that section does not apply to improvements or to charging the estate with the expense of improvements, but has to do with procedure generally under the statute. It says that the provisions in the subsections "shall have effect with reference to all applications to the Court under this or any other Entail Act;" and then subsection 6 goes on to say—"In every application it shall be competent to decern for payment of expenses of process against any of the parties to the proceedings, or to decern for payment thereof out of the entailed estate concerned, or out of the money consigned under the application." Now, this is a rule of a very extensive kind, and is intended to meet a variety of cases where authority is given to apply to the Court. The petitioner argues that under it that may be done in recent entails which section 7 specially authorises to be done in older entails. Now, I think that that is a contention to which we cannot listen. It cannot be said that in section 12 the same thing is authorised regarding Montgomery improvements in the case of an entail dated subsequently to 1848 as is authorised by section 7 in the case of an entail dated prior to 1848.

The only thing allowed by this subsection is that the expenses of process may be decerned for. Now, in the first place, the expenses of process do not embrace the most important part of the expenses, namely the raising of the loan, &c., and on the other hand it is not possible to give decree in the terms of the section. We cannot decern "out of the entailed estate;" it is not possible to do so, for that means out of the fee of the entailed estate, not out of the rents, for as the petitioner himself is in possession he could have no possible interest in getting such a decree against himself, and to decern for expenses out of the lands while they exist in *forma specifica* is a thing we have no power to do. It seems to me to be a *casus improvisus* under the estate. I think that the Lord Ordinary is right in the conclusion at which he has arrived.

Lords Deas, Mure, and Shand concurred.

The Court adhered.

Counsel for Petitioner (Reclaimer)—Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondent—Maconochie. Agents—T. & R. B. Ranken, W.S.

Friday, July 12.*

OUTER HOUSE.

[Lord Curriehill, Exchequer Cause.

INLAND REVENUE *v.* STRANG.

Revenue—Income-Tax—Income-Tax Acts, viz., 5 *and* 6 *Vict. cap.* 35, *secs.* 146 *and* 188, *and* 16 *and* 17 *Vict. cap.* 34, *Scheds. D and E—Voluntary Gift by Congregation to their Clergyman.*

A clergyman of the Established Church received at Christmas time a pecuniary gift of £100, raised by voluntary subscription among his friends, the majority being members of his congregation. He had received a similar gift at the same time each of the two previous years that he had held the charge. No receipt was granted, and the contributors were under no obligation to repeat the payment. *Held* (by Lord Curriehill) that as the sum in question was a payment made to him in respect of his office or employment of profit as clergyman, it was

* Decided June 14, 1878.

chargeable with duty under the Income-Tax Acts 5 and 6 Vict. cap. 35, and 16 and 17 Vict. cap. 34, and sections quoted above.

At a meeting of the Commissioners for General Purposes for the Kintyre district of the County of Argyll, under the Property and Income-Tax Acts, held at Campbeltown on 25th January 1878, the Rev. George Walter Strang, minister of the second charge of the parish of Campbeltown, appealed against an assessment of £100, for 1877-78, made upon him under Schedule E of the income-tax, in respect of a sum paid to him in the following circumstances, and alleged to be an emolument of his office:—

It was admitted on behalf of the appellant that since he had come to Campbeltown, about three years before, he had received at each Christmas time a pecuniary gift from his congregation of £100, as a token of their regard for him, and that at Christmas 1877 he had received this gift, which was raised by voluntary subscription among his friends—the majority being members of the congregation. The appellant had granted no receipt, the contributors were under no obligation whatever to repeat the gift, and it might never be repeated.

The appellant contended that the gift formed no part of his income within the meaning of the Income-Tax Acts. He paid income-tax on his stipend, glebe, rents, &c., being the full amount of the profit derived by him from his public office or employment as a minister of Campbeltown parish. The gift did not follow the office, nor did it fall under any of the descriptions given in the Act as "salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices or employments."

In support of the charge the Surveyor referred to Schedule E of the Act 16 and 17 Vict. cap. 34, under which duties in respect of every public office or employment of profit were granted, and to the rules for charging these in section 146 of the Act 5 and 6 Vict. cap. 35. The first rule there provided that the duties should be annually charged on those persons having, using, or exercising the office or employments of profits mentioned in Schedule E, "for all salaries, fees, wages, perquisites, or profits whatsoever accruing by reason of such offices or employments." And by the third rule it was provided that the duties should be paid in respect of, *inter alia*, "any office or employment of profit held under any ecclesiastical body."

The appellant being a minister of the Church of Scotland as by law established, his benefice, it was contended, was clearly within the description of an "office or employment of profit held under any ecclesiastical body, and so chargeable under Schedule E; and the £100 received annually, though voluntarily paid, accrued to him by reason of his holding such office under that ecclesiastical body, and was a pecuniary profit or perquisite liable to duty. Even although the sum in question should not be deemed a profit chargeable under Schedule E, the appellant was nevertheless liable to assessment therefor as "annual profits or gains," under the general rule, Sch. D, 5 and 6 Vict. cap. 35, which by virtue of section 188 of the same Act could be applied to the assessment in dispute.

The Commissioners sustained the appeal, and relieved the appellant, whereupon the Surveyor craved a case for the opinion of the Court of Exchequer, which was granted.

No appearance was made for the Rev. Mr Strang, and after hearing counsel for the Surveyor, the Lord Ordinary in Exchequer (CURRIEHILL) on 14th June 1878 found that the determination of the Commissioners was wrong. He added this note to his interlocutor:—

"*Note.*—Although this case has been heard *ex parte*, the appellant not having appeared, I have not disposed of it as in absence, but only after carefully considering the argument for the appellant stated in the case. It is with some reluctance that I have formed the opinion that the Commissioners are wrong and that the appellant is liable for income-tax on the £100 mentioned in the case. It is true that it is a voluntary contribution by the parishioners—one which they are under no obligation to make, and which they may withdraw at any time—but still it is a payment made to the appellant as their clergyman, and is received by the appellant in respect of the discharge of his duties of that office, which is one of public employment in the sense of the statutes. This being so, it follows that the payment must be regarded as either "emolument" under Schedule E, or "gain" under Schedule D of the statutes 5 and 6 Vict. c. 35, and 16 and 17 Vict. c. 34, and that it is chargeable with duty.

The interlocutor was acquiesced in.

Counsel for the Inland Revenue—Rutherfurd. Agent—D. Crole, Solicitor of Inland Revenue.

Friday, July 12.

FIRST DIVISION

[Lord Craighill, Ordinary.

FAIRBAIRN *v.* MILLER (COCKBURN'S TRUSTEE.)

Process—Petition for Order for Delivery of Premises at Instance of Trustee on Bankrupt Estate—Warrant of Ejectment following without Intimation.

Held that a warrant of ejectment following upon an order pronounced in the Sheriff Court in a petition at the instance of the trustee on a bankrupt estate, ordaining delivery of certain premises, &c., which were in the occupation of the defender, was illegal, in respect there had been no intimation of the application to nor service of it upon the defender, and damages found due therefor.

This was an action of reduction and damages brought in the following circumstances:—The pursuer in this action, Thomas Fairbairn, had for some time carried on business in Caledonian Terrace, Edinburgh, as a spirit merchant, but in February 1877, having got into difficulties, he came to an agreement with a brother-in-law named John Cockburn, who had previously carried on business there, that he should take back the business at a price named, but that he was himself to remain in the premises and receive a certain weekly sum from Cockburn for the sake of his licence. Cockburn became bankrupt in December 1877, and his estates being sequestrated, Mr Hugh Miller, C.A., the defender in this action, was appointed trustee.