Ordinary, and adjusted the following issues for the trial of the cause:—"(1) Whether on or about the 8th day of March 1882 the defender Thomas Burton Taylor wrongfully presented, or caused to be presented, in the Sheriff Court of the sheriffdom of the Lothians at Edinburgh, a petition praying that the pursuers the said J. B. Smith & Company, and pursuer J. B. Smith, be decerned to execute a disposition *omnium bonorum* for behoof of their creditors, and having obtained the Sheriff's warrant thereon, published, or caused to be published, a notice of said petition in the *Edinburgh Gazette*, to the pursuers' loss, injury, and damage.—Damages laid at £1000. (2) Whether on or about the 8th day of March 1882 the defenders Paterson, Cameron, & Company wrongfully presented, or caused to be presented, in the Sheriff Court of the sheriffdom of the Lothians at Edinburgh a petition praying that the pursuers the said J. B. Smith & Company, and pursuer J. B. Smith, be decerned to execute a disposition *omnium bonorum* for behoof of their creditors, and having obtained the Sheriff's warrant thereon, published, or caused to be published, a notice of said petition in the *Edinburgh Gazette*, to the pursuers' loss, injury, and damage.—Damages laid at £1000."

Counsel for Pursuer—J. P. B. Robertson—Armour. Agents — Beveridge, Sutherland, & Smith, S.S.C.

Counsel for Defender Taylor—Graham Murray. Agents—Paterson, Cameron, & Co., W.S.

Counsel for Defenders Paterson, Cameron, & Co. — Trayner — Darling. Agents — Horne & Lyell, W.S.

Friday, December 8.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

DUNCAN *v.* BROWN AND MANN.

Teinds—Locality—Over and Under Paying Heritors—Effect of Decree of Reduction of Final Locality.

By an interim scheme of locality in 1862 for allocating an augmentation awarded in 1859, a proportion of augmentation was laid on the lands of D., which had previously paid no stipend, and a certain other proportion on the lands of B. and M. In consequence of an objection being sustained to this scheme, on the ground that D.'s teinds were college teinds, by a new scheme, approved as final in 1874, D.'s teinds were exempted from payment of stipend and a further burden laid on those of B. and M. The last-mentioned scheme, along with two earlier ones of 1806 and 1822 respectively, were, at the instance of B. and M. and certain other heritors, set aside by decree of reduction in 1878, by which the scheme of 1874 was ordained to stand as an interim rule of payment till a new scheme of locality should be furnished. A rectified scheme was at length approved as final in 1879, commencing with crop and year 1878 and in time coming. D., as an over-paying heritor, then raised an action against B. and M., as under-paying heritors, for repetition of a sum of money as over-payments of stipend made by him for the period between 1859 and 1874. *Held* (*rev.* Lord Ordinary—*diss.* Lord Young) that the decree of reduction having fixed the inauguration of the new scheme of locality at a date posterior to that when the reduced locality had come into force, could only operate prospectively from that date so as to affect future payments only, and not retrospectively so as to affect past payments; and consequently that the final locality of 1874 was the rule of payment of stipend for the period to which it was made applicable; and that the pursuer's claim was in the circumstances well founded.

Observations (*per* Lord Justice-Clerk) on the practice of the Teind Court in the process of reduction of localities.

This action was raised by John Duncan of Parkhill, in the county of Forfar, against Mrs Brown, widow of Alexander Brown, farmer, Sunnyside, Montrose, and Miss C. J. Mann, residing at Hillside in the same county. The facts of the case are summarised by the Lord Ordinary as follows:—"This action is brought by one of the heritors of the parish of Montrose against two of the other heritors, to recover a sum of £94, 19s. 6d. which is said to be the amount due by the defenders to the pursuer in respect of over-payments of stipend. By an interim scheme, dated 20th June 1862, for allocating an augmentation awarded on 23d May 1859, a proportion of the augmentation amounting to 13 b. 1 f. 2 p. 2⅜ l. of meal, the like amount of barley, and £4, 16s. in money, was allocated on the teinds of the pursuer's lands, which had previously paid no stipend; and the defenders' lands, which already paid of old stipend 2 bolls 3 firlots and half a lippy of meal, and 3 bolls 1 firlot and 1¼ lippy of barley, were burdened in addition with 2 firlots 3 pecks 3⅜ lippies meal, the like amount of barley, and 5s. 3½d. of the augmentation. The interim scheme was objected to by the Principal and Professors of St Mary's College, in so far as it allocated the teinds of the pursuer's lands for stipend, on the ground that these were college teinds; the objections were sustained; and by a scheme approved as a final scheme on 13th March 1874 the pursuer's teinds were exempted and a further burden was laid upon the defenders' teinds. It follows that if the rights of parties are still to be regulated by the last-mentioned scheme, the pursuer was an over-paying heritor, and the defenders were under-paying heritors for the period between 1859 and 1874, during which the stipend was paid in accordance with the scheme of 1862. But it appears that the amounts allocated on the defenders and certain other heritors by the final scheme of 1874, and also by two previous localities of stipend awarded in 1806 and 1822, were in excess of the true liability; and all these localities were accordingly set aside by decree of reduction, obtained on 8th December 1878, in an action at the instance of the heritors in question against the minister, titulars, and the remaining heritors of the parish. The ground of reduction was that the decrees of locality sought to be set aside were 'erroneous' and *ultra vires*, inasmuch as the lands of the defenders and other heritors

pursuing the action were thereby localled upon for stipend in excess of the value of the teinds. It appears from the state of teinds that the defenders' rental was stated for the purposes of the locality at £60, and consequently that the amount of the teind was taken to be £12, whereas they averred in the action of reduction that the true agricultural value of the lands did not exceed £15, 6s. 4d., and that the teind did not exceed one-fifth of that sum, or £3, 1s. 3d. At the date of the action the defenders' teinds had not been valued. But the process was sisted to allow a valuation to be raised; and this having been done, the value of the defenders' teinds was found to be precisely as they had alleged, £3, 1s. 3d., and the respective values of the teinds of the heritors complaining of the decrees of locality were in like manner found to be below the amounts on which these decrees had proceeded. The ground of reduction was thus established, and the Lord Ordinary accordingly gave decree in terms of the conclusions of the libel, but ordained the locality of 13th March 1874 to stand as an interim rule of payment to the minister until the pursuers should furnish him with a new decree of locality, and remitted to the clerk to prepare a locality accordingly. A rectified scheme was thereafter prepared, and by interlocutor of 14th March 1879 the Lord Ordinary 'approved of the said scheme as a final locality of the said stipend, commencing with crop and year 1878 and in time coming.' By the new scheme of locality thus approved of, the pursuer's lands are exempted from stipend, as they had already been by the locality of 1874. The defenders' teinds, on the other hand, were surrendered and exhausted. But the whole amount of the teind being less than the stipend previously localled upon them, the effect of the new locality, which now stands as the final and only susbsisting locality of the stipend, was to relieve them of a burden which the reduced decrees had erroneously laid, not only upon their teinds but upon their stock. The result is that it is now established by final decree of the Court of Teinds that during the period to which the present action relates—that is, from 1859 till 1874—the teinds of the pursuer's lands were wrongly allocated for stipend, these teinds being by law entitled to exemption so long as there were other teinds in the hands of the heritors which could be made available to the minister. On the other hand, it is established that the defenders during the period in question were not in the position of retaining teind which ought to have been burdened with stipend to the relief of the pursuer, because the locality which wrongly burdened the pursuer's teinds was likewise wrong in allocating not only the whole of the defenders' teinds but also a portion of their stock."

The pursuer pleaded—"(1) The final locality of 1874 is the rule of payment of the stipend of the minister of Montrose for crops 1859 to 1873 inclusive. (2) The heritors who over-paid under the interim locality of 1862 are entitled to rectification in terms of the final locality of 1874. (3) The pursuer having made payments to the minister in excess of the sums localled on him in the final locality, or justly due by him, is entitled to repayment of said excess from the underpaying heritors, and the sums sued for being the defenders' proportion of the pursuer's over-payments, the pursuer is entitled to decree in terms of the summons."

The defenders pleaded—"(1) The rights and liabilities of over and under paying heritors being regulated by the final locality of 1879, the pursuer has no claim for over-payments against the defenders. (2) The locality of 1874 having been reduced and set aside, the claim of the pursuer is unfounded, aud the defenders ought to be assoilzied. (3) The sums of principal and interest sued for not being due by the defenders, they should be assoilzied."

The Lord Ordinary assoilzied the defenders.

"*Opinion*—[*After the narrative above quoted*].—In those circumstances the pursuer claims to be relieved by the defenders of the over-payments made by him under the interim scheme of 1862. I am of opinion that the claim is not well founded. The pursuer appeals in support of it to the well-established rule by which underpaying are held liable in repetition to overpaying heritors when the true scale of liability has been ascertained and determined by the adjustment of a final scheme of locality. But it is not, as I understand, maintained that this rule can be made available to the pursuer if the only subsisting locality, *i.e.*, the final locality of 1879, is to be taken as fixing the extent of the defenders' liability. And indeed it is obvious that if that scheme is to be taken as regulating the adjustment of over and under payments the defenders cannot be in the position of underpaying heritors. For the final scheme establishes that under the previous interim scheme the defenders were not paying less but more than by law they were liable to pay. It is accordingly maintained that although the scheme of 1879 fixes the rule of payment from and after the date when it came into operation, the defenders' liability for the period prior to the reduction must still be measured by the scheme of 1874. But it appears to me that a scheme which the defenders have succeeded in reducing as erroneous cannot be appealed to as regulating their liability for any purpose whatever.

"It seems to be clear that the pursuer cannot succeed unless he is entitled to found upon the scheme of 1874 as fixing the defenders' liability. The ground of the overpaying heritor's right to reimbursement has been stated in different ways. But in all the authorities the ultimate basis of the claim is assumed to be the payment by the overpaying of the underpaying heritor's debt. Thus it is stated by Lord Benholme in *Haldane* v. *Ogilvy*, 10 Macph. 62, that the claim is 'strictly and simply a claim of debt—a claim for money advanced by the creditor for the debtor at a time when their respective pecuniary liabilities were misunderstood;' and in *Mackenzie* (*Cheape's Factor*) v. *The Lord Advocate*, 5 R. 589, the doctrine is thus explained by the Lord President —'The claim of the minister for payment of his stipend is a claim which the law gives against the heritors of the parish — against the party who holds the land and who is answerable for the teind. . . . And in a case where the heritor has not paid his debt to the minister the claim subsists against him, and that claim is, according to the practice of the Teind Court and of this Court, held to be transferred to the overpaying heritor so as to prevent an unnecessary circuity of actions, and the overpaying heritor thus comes to be the creditor of the underpaying heritor.

He comes, as it were, in place of the minister in making that demand.'

"The pursuer therefore undertakes to prove that in the years 1859–73 the defenders were liable by law to pay a share of the stipend allocated upon him in addition to what they actually paid. But that cannot be established by the scheme of locality of 1874 either on the ground of its fixing the liabilities of the heritors by final decree, or on the ground of its affording evidence of the amount of the defenders' teinds. The scheme is of no force or value for either purpose, because it has been reduced as erroneous, and inconsistent with the rights of parties.

"An argument was, however, maintained for the pursuer, which, although I have come to think it unsound, appeared to me very worthy of consideration. It is said that the defenders by their proceedings have deprived the pursuer of his remedy against those heritors who were actually underpaying during the period in question. It is said that if they had stated their objection in due time they would have obtained a final scheme, which would have conclusively established the liabilities of the heritors to the minister, and consequently their respective rights and liabilities *inter se* for the whole period during which the augmented stipend was payable. But the scheme which they have procured in the process of reduction commences only with crop and year of 1878, and therefore, it is said, cannot regulate the rights of parties for the period prior to 1878. It is argued therefore that if the pursuer were now to proceed against the underpaying heritors, he would have no final scheme to appeal to as showing by whom the excess of stipend wrongly laid upon him ought in fact to have been borne; and it is said that the defenders have thus deprived him of his remedy against the other heritors, and must therefore be content to bear the liability which would otherwise have attached to the true underpayers. I express no opinion as to the liability of heritors who are not parties to this process. But as against the present defenders I think the argument fails. The decree ordaining a new locality to commence as from 1878 decides nothing as to the adjustment of over and under payments. It fixes only that the new locality shall be operative as a rule of payment to the minister as from that date. It may or may not be that payments made under the scheme of 1874 are to be taken as well made. But what the pursuer has to maintain is, not that payments already made shall stand, but that the scheme of 1874 must be accepted as the standard for correcting the erroneous payments made under the scheme of 1862. Now, if that contention is rested, not on the merits of the scheme itself, but on the proceedings of the defenders, it resolves into a plea of bar by conduct. The question therefore is, whether the defenders are barred by their conduct from disputing the accuracy of the scheme of 1874? and I think that question is necessarily decided in their favour by reason of their having already obtained a decree of reduction. The pursuer's argument comes to this, that as between him and the defenders the scheme of 1874 must still remain effectual, because if it were set aside he could not be restored to the position in which he stood before it was approved of as a final scheme. But if that contention were well founded it would have afforded a good defence to the action of reduction. After decree of reduction has been pronounced I cannot hold that the defenders are barred from founding upon it by reason of any difficulty in giving complete restoration to another heritor who was called as party to the action, and the plea that the defenders are barred from maintaining the invalidity of the scheme which has been reduced is, in other words, a plea that they are barred from founding upon the decree of reduction which they have obtained.

"The result is that I think the pursuer has failed to prove his case, and the defenders must therefore be assoilzied with expenses."

The pursuer reclaimed, and argued—The pursuer was undoubtedly entitled in 1874 to repayment of these sums, and in spite of what has followed he must still have a remedy, and the only persons against whom he can have it is the defenders, as underpaying heritors then. It is their fault if they have let the true debtor escape. The main question is as to the effect of the decree of reduction and final locality of 1879. In 1874 the defenders would have had no answer to pursuer's action; had they any now in virtue of that decree? Had they paid it to the pursuer then, it would have been impossible for them to recover it, for then he would have held it under a final decree of locality, and it is settled that you cannot go back by way of *condictio indebiti* on a final decree of locality. Mere words of style in a decree of reduction must not be read too literally, but with reference to the operative conclusions of the summons. The reduction is only a reduction so far as necessary to set up the new locality. It is certain that a reduction of a decree of final locality can never operate *retro* to the effect of setting up claims adverse to the new final locality. Here it is said to operate *retro* negatively to extinguish claims. The former practice was that the decree of reduction contained at the same time a new locality. It was a modern innovation to separate the decree of reduction and the locality. The only difference is that now we have two interlocutors instead of one; the effect of the whole is the same as formerly. The Teind Court had no jurisdiction to force repetition of overpayments like those here, and the pursuer was thus compelled to come to the Court of Session.

Authorities—*Cuthbert* v. *Waldie*, Jan. 24, 1840, 2 D. 447; *Mags. of Montrose* v. *King's Coll. of Aberdeen*, *hoc cit.*; *Weatherstone* v. *M. of Tweeddale*, Nov. 12, 1833, 12 S. 1; *Chisholm-Batten* v. *Cameron*, Jan. 16, 1873, 11 Macph. 292; *Lawson* v. *Lindsay*, Shaw's Teind Cases, 32; *Maxwell* v. *Jardine*, *ib.*, 143; Juridical Styles, 2d ed., iii. 518.

Argued for defenders—This case differs from all previous cases in the fact that while the pursuer has admittedly paid more than he owed, he cannot show that the defenders, from whom he seeks to recover it, have paid less than they should. The scheme of 1874 was absolutely reduced and set aside by the decree of 1879, which can have no other meaning. That scheme was set aside because it did the defenders injustice. To revive it now to the effect contended for by the pursuer would be to do them injustice again. The pursuer's remedy was to have objected in the action of reduction; he failed to do this, and his remedy is gone. In any view, he was not suing the proper debtor. It is true the Teind Court cannot

reduce to the effect of affecting the interests of the heritors *inter se*, but it may correct by way of re-allocation.

Authorities—*Campbell's Trustees* v. *Sinclair*, April 15, 1878, 5 R. (H. L.) 119; *E. of Moray* v. *Inglis*, Nov. 12, 1836, 15 S. 2.

At advising—

Lord Craighill—The pursuer and defenders are heritors of the parish of Montrose, and this action has been raised that the pursuer may recover from the defenders alleged overpayments of stipend said to have occurred in the course of the locality following on an augmentation granted to the minister in 1860. The pursuer founds on the locality approved final in 1874 as the evidence of his claim. The defenders dispute that this claim has been established, the locality of 1874 having, as they say, been set aside in 1878, and been superseded in 1879 by another in which the stipend payable by the defenders is diminished. The result depends on the question whether the locality approved final in 1874 is still the measure of the defenders' liability for stipend prior to that year. And this again depends on the question whether the reduction of 1878 was an out-and-out reduction. The pursuer says it was not, the locality of 1874 having, as he contends, been set aside only in so far as was necessary to open the way for the locality of 1879, which, as the interlocutor of 14th March 1879 approving of it declares, is a locality commencing with crop and year 1878 and in time coming. The point therefore for determination truly is, what is the import of the decree of reduction, the conclusion in terms of which it was pronounced being one of a series of conclusions all of which were, as the condescendence shows, ancillary to the purpose of changing the localling on the defenders' teinds for the future but not for the past. The relevancy of this inquiry is not matter of controversy, and accordingly once its result shall be fixed, or, in other words, the true import of the decree of reduction as a step in the process of reduction and locality shall be fixed, the controversy will be decided. The burden rests on the pursuer, for unless the alleged qualification or limitation of the decree of reduction shall be satisfactorily established, judgment in this action must be delivered in favour of the defenders.

The decree of reduction bears that the locality of 1874 was to be from the beginning, to be now, and in all time coming of none effect. Such, according to the language of the reductive conclusion read by itself, would be the result of the decree which was pronounced, but such a result was not necessary for the purpose to be served by the action, that being to open the way for the next conclusion, which is in the following terms:—"And the said decrees of locality being so reduced, a new allocation of the stipend of the said parish should be settled and established according to the rights and interests of the pursuer and the other heritors of the parish, in the order and proportions in which they respectively are liable for the same, and in the same manner as if the said final decrees had never been pronounced; and the same being so done, the said new allocation ought and should be declared to take effect as for crop and year 1876 and in all time coming thereafter." The import of these conclusions, as I read the summons, is that there should be a new locality to take effect as from crop and year 1876, and that so far as might be necessary to this end the locality of 1874 and prior localities should be reduced. The operation of the reductive conclusion might, no doubt, have been qualified by words of express limitation. And had it so been, the probability is that the present litigation would have been avoided. But taking things as they are, the true result is not an absolute but only a qualified reduction—that is to say, a reduction by which the impediment presented by the locality of 1874 to a restriction of the liability of the defenders for future stipend would be as completely removed as if the decree of 1874 never had been pronounced. This reading of the decree appears to me to be reasonable in itself, the action having been an action of locality as well as reduction; and it certainly is that which is suggested by the statements in the condescendence, which is part of the summons—those statements being the reasoned causes for which, according to the language of the summons, the reduction concluded for was to be pronounced. Thus it is set forth in articles 5 to 14 inclusive of the condescendence that the agricultural values of the lands there condescended on, belonging to the several pursuers of the reduction, do not exceed the sums there specified, and the sums there specified are the present values. The past is not referred to; the present value is taken as the test of the defenders' right to a reduction, and once the present value is determined that is to be rendered permanent by the valuation in which both the present and consequently the future value is to be once for all determined. Clear it is, therefore, that the effect of the action was not intended to be—as, indeed, looking to the grounds upon which it was laid, it could not be—retrospective. The reduction was concluded for that in future the stipend payable by the defenders might be less, but as past allocation was not impugned, the inference that the reduction was to be prospective and not retrospective cannot reasonably be resisted.

The proceedings in the action of reduction and locality corroborate all that has been said. The action was raised in January 1877. The Lord Ordinary sisted the process to enable the pursuers of that action to bring a valuation of the teinds of their respective lands, and this having been done, his Lordship, in respect thereof, on 18th October 1878 found the respective values of the rent, stock, and teinds in all time coming of their several lands to be less than that stated in the final locality of 1874. Thereafter, on 8th November 1878, he, in respect of the decrees of valuation produced in the process of reduction, reduced, decerned, and declared in terms of the conclusions libelled. He ordained the locality of 13th March 1874 to stand as an interim rule of payment to the minister until he was furnished with a decree of locality, and this decree was provided by the interlocutor of 14th March 1879, in which the Lord Ordinary, having advised the rectified scheme of locality of the stipend modified to the minister of the parish of Montrose on 23d May 1860, approved of the said scheme as a final locality of said stipend, commencing with crop and year 1878 and in time coming, and decerned. Thus we see that the ground of reduction was the valuation, which was not retrospective, and we further see that,

as could not but be the case, the locality for which this reduction opened the way, in place of affecting the locality as it stood prior to the reduction, was limited in its commencement to crop and year 1878. The purpose of the action, the ground of the action, the language of the interlocutors in which the one is disclosed and the other is founded on, render it, in any view of the matter, perfectly plain that the reduction was not absolute, or in other words retrospective, butwas by clearest implication limited in its operation to the locality of 1874, so far as that locality fixed and was a measure of the liability of the pursuers of the reduction, the present defenders, for stipend payable to the minister from and after crop and year 1878. This reading of the decree saves us from the anomalies which would be inseparable from the larger interpretation, one of which is a reduction unwarranted by the reasons and causes for which it was pronounced; another is a reduction wider than is necessary for the end to be served, and the last is a reduction by which payments of stipend from 1860 to 1878 would be left uncovered by a locality, and the relative rights and obligations of the heritors making these payments would be left not only unconstituted, but would be left beyond the possibility of constitution. The notes of the Teind Clerk and the information from the teind records furnished by the parties appear all to be in harmony with the view that the reduction was to be only prospective in its operation. There were many forms, and the practice also was various, but what frequently occurred was the preparation of a new locality before the locality was reduced, and where this occurred the reduction was expressly limited. But at other times, as here, the old locality was reduced before the new one was ready for approval; and yet the reduction clearly was under the same limitation in both. It did not operate *retro*, but was only prospective in its operation. This could not be better exemplified than in the case of *Macdonald of Sanda* v. *The Minister and Heritors of Southend*, August 1781. There a decree of locality was reduced from and after the crop and year of God 1773, but afterwards this was limited by an interlocutor declaring that "the reduction shall only draw back and commence from crop 1774." This shows that notwithstanding the wide —it may almost be said the absolute—generality of the decree, the period from which it was to operate remained to be fixed after decree had been pronounced. This could be done expressly, as in the case of *Southend*, but it could be done also indirectly by fixing the commencement of the new locality. This, at any rate, is my reading of those portions of the records of the Teind Court which are to be found in the papers printed by the parties for the information of the Court.

On the whole, I am of opinion that the interlocutors reclaimed against ought to be recalled, and decree given for the overpayments concluded for. I am of opinion, therefore, that the interlocutor of the Lord Ordinary should be recalled, and the case sent back to his Lordship in order that that which shall now be ascertained to be the rights of the parties as to overpayment may be ascertained in detail.

Lord Young—I am of opinion that the judgment of the Lord Ordinary is right, and ought to be affirmed, and I have nothing to add to the judgment, as his Lordship has very carefully and thoughtfully expressed it.

Lord Rutherfurd Clark—I am of the same opinion as Lord Craighill, and I have little to add. When the final decree of 13th March 1874 was pronounced, there arose to the pursuer as an overpaying heritor an immediate claim against the underpaying heritors. Hence it is not doubtful that apart from the proceedings in the reduction the pursuer is a creditor of the defender in the sums sued for. The question is whether his right as such creditor has been destroyed. It is to be kept in view that in pronouncing the final decree the Court necessarily ascertained the amount of the teinds in the parish. Every heritor was concerned in this matter in order to the due allocation of the stipend. Accordingly the process of locality is a valuation of the teinds when they are not valued, not in perpetuity, but for the purposes of the locality. The heritors are all the parties to this valuation, and either by their own appearance, or through the common agent as their general representative, they take part in it. But the defender alleges that her teinds were overvalued, and that the amount of the stipend allocated on them encroached on the stock. Hence she brought an action to reduce the final locality, in order, as the condescendence bears, to obtain "relief from future payments." To say the least, I think it very doubtful whether she could have obtained any relief without raising an action for valuing her teinds. For any new valuation or ascertainment of the teinds in the process of reduction would not be more permanent than the valuation such as it was in the process of locality; and I do not think that the Court could be called on to replace a former valuation by one just as temporary. But further, the valuation in the process of locality was, as I am inclined to think, binding on the pursuer as a valuation as ascertained by a decree of the Court in the process to which she was a party. The defender, however, raised an action of valuation, and having obtained a decree in which the teinds were fixed at a less amount than the amount ascertained by the locality, she obtained in respect of the decree of valuation a reduction of the final decree of locality. This decree did not value the teinds in the past, but only for the future. Therefore it did not ascertain that the final decree of locality was erroneous, but only that the teinds of the defender's lands, as therein fixed, were in excess of the true amount as fixed for the future. Hence, in my opinion, the reduction was only intended to operate, and could only operate, in the future; aud from the condescendence it appears that the pursuer desired no more. Hence the new final decree of locality commences with the crop of 1878. Any other view would in my opinion cause a loss to the pursuer, from which he would obtain no relief, and which by no effort of his own he could have avoided. He had no interest in the amount at which the defender's teinds were fixed in the process of locality. He had a claim against those heritors who might turn out to be underpaying, as the final decree might determine, but his claims were ascertained by that final decree. He has no claim for repayment except under it. If it had been reduced, and a new decree substituted for it, to commence

from the beginning of the process of locality, he might have had his remedy against others than the defenders, because for the period prior to 1874 there is no final decree of locality except that of 13th March 1874. No doubt there is hardship in any view of the case, but the defender has herself to blame for not looking after her interests in the process of locality.

LORD JUSTICE-CLERK—I concur in the opinion of Lord Craighill, and only add a few sentences on the principles on which this judgment proceeds.

The right and jurisdiction of reviewing final localities by way of reduction has been exercised by the Teind Court ever since it was established, but it has been exercised from the first as a process of rectification only; and while the ordinary reductive conclusion was necessary in order to leave the Court at liberty to settle the rights of parties as might seem to be equitable, they always retained the power, and frequently applied it, of qualifying in the end the absolute terms of the decree as might appear to be just.

Accordingly, it is very clearly proved by the excerpts furnished by the Teind Clerk from the records of the Teind Court that the terms of the ultimate deliverance of the Teind Court in actions reducing final localities have varied according to the wrong immediately complained of. In some cases the Court have given a retrospective effect to the decree of reduction and to the ultimate locality, to the date of the locality reduced, which of course drew back to the date of the original process of augmentation from which it flowed, sometimes to the date of the summons of reduction, and sometimes, as in this case, to the date of the decree of reduction, that is, crop and year 1878, four years after the date of the reduced decree.

The Teind Court in reducing a final decree of locality have generally declined directly to consider or decide any question relative to the rights of heritors *inter se* consequent on the reduction, holding that to be a matter proper to the Civil Court, although the practice on this matter has not been uniform. But they seem to have asserted the same power by regulating the period at which the new locality to be supplied by the reducing heritor is to receive effect. The date so fixed necessarily regulates the interests of the heritors who have paid under the old locality, because if the rule of payment be neither the old locality nor the new, the heritors' liability remains undetermined, which is at variance with the principles on which the processes of augmentation and locality proceed. In the ordinary case interim decrees of locality simply afford the minister ready process for exacting his stipend, leaving the ultimate liability of individual heritors to be adjusted when the final decree has been pronounced, as that decree draws back to the commencement of the process. When a final decree is reduced, if the effect of the decree is not qualified, the final decree becomes that approving of the reducing heritors' substituted locality, and the reduced locality will only operate as an interim decree until the new decree is approved of. The question of over and under payments will then necessarily be regulated by the terms of the new decree if unqualified, because it becomes the rate of payment from the commencement of the original process. But when the new locality is declared to take effect only from a date posterior to that of the reduced decree, it can have no effect on payments made prior to the commencement of its operation, and the old locality is necessarily left to take effect on the intervening period, because the reduction reaches no further.

After careful study of all the authority on this matter to which I have access, I am satisfied that this is the import of the practice of the Teind Court in this matter. I am the more confirmed in this that the contrary view maintained in the argument was that the date assigned to the new locality was of no consequence, and was mere surplusage. That it is not so is proved to demonstration by the excerpts from the teind records, in which more than one example is to be found of the date having been made the subject of keen controversy, and indeed one need not go beyond the present case to show that it may be so, for the pursuer of the reduction demanded that the new locality should draw back to 1876, which was refused.

We were referred to the case of *Weatherstone*, in the 12th vol. of Shaw's Reports, p. 1, which undoubtedly fixed some important points as to the effect of reducing a decree of locality; but this was not, and could not be among them, as the ultimate decree of locality consequent on the reduction in that case does not appear to have been limited.

The reason for limiting the effect of the final decree of locality in this case is sufficiently obvious. The pursuer of the reduction asked for nothing more than protection for the future, both in his summons and in his record. Besides, his reduction proceeded on a valuation obtained by him after his process of reduction was raised, which could not have qualified the decree under reduction, and which therefore was quite rightly left to affect only the future payments.

The Court recalled the Lord Ordinary's interlocutor, and granted decree for the principal sum, in terms of the conclusions of the libel, with interest at 4 per cent., and remitted the case to the Lord Ordinary to proceed.

Counsel for Pursuer—(Reclaimer)— Mackintosh—Darling. Agents—Mackenzie & Kermack, W.S.

Counsel for Defenders (Respondents)—Keir—Pearson. Agents—Mackenzie, Innes, & Logan, W.S.

Friday, December 8.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

SIMPSON (MINISTER OF BONHILL) *v.* WATSON AND OTHERS.

Teinds—Disjunction and Annexation quoad omnia *—Right of Minister to Reclaim Teind from Annexed Lands.*

Certain lands in the parishes of Luss and Kilmaronock were in the middle of the 17th