

by himself. Accordingly, he has a right to legitim if there is any fund out of which legitim can be paid. The only question therefore is, whether there is a legitim fund? The answer to that question apparently depends upon whether the goodwill of certain public-houses is to be regarded as heritable or moveable. Mr Fraser tells us that the Sheriff has held this goodwill to be heritable, and that there is therefore no legitim fund. But in a statement of legitim produced by the trustees themselves I find that it is set down at £422, 18s. 6d., and one-sixth of that sum, being the share to which the pursuer would have right, is £70, 9s. 9d. Under these circumstances I do not think that it would be reasonable to require the pursuer to sist a mandatory as a condition of obtaining an accounting from his father's trustees. It therefore appears to me that the motion should be refused.

LORD ADAM concurred.

LORD M'LAREN—I concur, and desire to add that I am much impressed by the reasoning of Lord Deas in the case cited to us (*Simla Bank v. Home*, 8 Macph. 781) as to the position of a man who is abroad in the public service. It is often said that if a man is unable to find a mandatory who would be willing to represent him, he may at least return to this country and prosecute his suit. But a man who is absent on the public service may be unable to return, and on that ground deserves some consideration. The prominent point in the case is that this is a suit for the administration of an estate in the hands of defenders who are trustees. According to their own statement the pursuer is entitled to legitim; and I do not think that in claiming it he is making a claim contrary to the scope of his father's settlement, because it appears from the condescendence that the trustees were expressly directed to pay him his legitim. In these circumstances I cannot hold that this is a case in which the pursuer should be obliged to sist a mandatory.

LORD KINNEAR concurred.

The case was sent to the roll.

Counsel for the Pursuer and Appellant—W. L. Mackenzie. Agent—H. H. Macbean, W.S.

Counsel for the Defenders and Respondents—M. P. Fraser. Agent—James Reid, W.S.

Tuesday, October 15.

SECOND DIVISION.

[Lord Low, Ordinary.]

DAVIES v. DAVIES.

Process — Reclaiming-Note — Reclaiming-Note Signed by Party only—Competency. Circumstances in which the Court repelled an objection taken to the competency of a reclaiming-note on the

ground that it was signed by the party reclaiming and not by counsel.

Mrs Rebecca Ash or Davies, wife of Simon Davies, tailor and clothier, Edinburgh, raised an action of separation and aliment against her husband on the ground of cruelty.

Defences were lodged by the husband. These defences were signed by counsel. After the closing of the record the defender ceased to be represented by counsel or agent, and he conducted the defence on his own behalf.

After proof the Lord Ordinary (Low) found that the defender had been guilty of cruelly maltreating the pursuer, and granted decree of separation and aliment.

The defender presented a reclaiming-note signed by himself and not by counsel.

The pursuer objected to the competency of the reclaiming-note, and argued—The note was not signed by counsel, and no attempt had been made by the defender to get the signature of counsel. There being no special circumstances in this case the Court should refuse to receive the reclaiming-note—*Hawks v. Donaldson*, November 16, 1889, 2 F. 95, 37 S.L.R. 70; *Whyte's Judicial Factor v. Whyte*, June 19, 1900, 37 S.L.R. 784.

Argued for the defender—It was unnecessary for the defender to obtain the signature of counsel. He was a poor man and could not afford to employ counsel. By the law of Scotland a party was entitled to conduct his case in any court of law and to sign the necessary documents.

LORD JUSTICE-CLERK—It is the opinion of the Court that in the circumstances of this case the objection taken by the claimer should not be sustained.

LORD YOUNG was absent.

The Court sent the case to the roll.

Counsel for the Pursuer and Respondent—J. A. Christie. Agent—Geo. Meston Leys, Solicitor.

Counsel for the Defender and Reclaimer—Party. Agent—Party.

Friday, October 18.

FIRST DIVISION.

C D v. INCORPORATED SOCIETY OF LAW-AGENTS.

Administration of Justice—Law-Agent—Restoration to Roll—Forgery.

A law-agent was found guilty in 1894 of forging and uttering a copy of a pretended interlocutor of court, having the forged signature of a clerk of court appended thereto, with the object of uplifting certain money consigned in bank, and was sentenced to fifteen months' imprisonment. In 1896, on his own application, his name was removed from the Register of Law-Agents, and