

COURT OF TEINDS.

Wednesday, June 2.

MINISTER OF CUMBERNAULD AND
OTHERS v. HERITORS OF
DUMBARTON.*Church—Stipend—Fiars Prices—No Prices
Struck for Barley in County—Act 48 Geo.
III, cap. 138, sec. 12.*

The *quoad omnia* parish ministers in a county, no fiars prices having been struck for barley which formed part of the victual stipend, presented a petition under the Act 48 Geo. III, cap. 138, craving the Court to fix the highest fiars prices of adjoining counties for the crop and year in question and succeeding years as applicable to the county in question. The Court appointed and fixed the highest fiars price of barley of an adjoining county for the year in question, and for succeeding years when no fiars price for barley should be struck in the county in question, as the basis on which the stipends in barley should be paid.

The Act 48 Geo. III, cap. 138, enacts—Section 12—“That where any such parish shall not be altogether situated in one and the same county or stewardry, or where no annual fiars applicable to the kind or description of grain or victual modified, shall be struck in the county or stewardry wherein such parish is situated, it shall be competent for the said Lords of Council and Session as Commissioners aforesaid to fix upon and specify two or more of the adjoining counties, or such stewardry, county, or counties as they shall deem most suitable in the circumstances of the case, according to the annual fiars prices of which stewardry, county, or counties they shall decree the value thereof to be paid in money.”

The Reverend John Ogilvie, M.A., minister of the parish of Cumbernauld, and others, the ministers of *quoad omnia* parishes in the county of Dumbarton, petitioners, brought a petition craving the Court “to appoint and fix the highest fiars prices of such of [the] adjoining counties as your Lordships shall deem most suitable for the crop and year 1919 and succeeding years according to which the portion of . . . stipends due to the ministers of the parishes in the county of Dumbarton allocated in barley shall be paid.”

Answers were lodged by Sir Colin George Macrae, W.S., and others, heritors in the county of Dumbarton, respondents.

The petition set forth—“The petitioners are the ministers of the whole *quoad omnia* parishes of the county of Dumbarton with the exception of the parish of Kilmarnock, which is presently vacant. The whole of the said parishes referred to are within the presbytery of Dumbarton with the exception of the parish of Cumbernauld and the parish of Kirkintilloch, which are within the bounds of the presbytery of Glasgow. The stipends of the petitioners are payable from the teinds under their respective

augmentation, modification, and locality decrees, and are localised on the heritors of the various parishes in terms of the relative schemes of locality. At the Fiars Court for Dumbartonshire, held in Dumbarton on 26th February 1920, there was no return for barley, which forms part of the petitioners' victual stipend, and in consequence no legal fiars prices have been struck for barley for the said county of Dumbarton for the crop and year 1919. . . . The counties immediately adjoining Dumbarton are Stirling, Renfrew, and Lanark. In Renfrewshire there are no highest fiars prices struck for barley, and the portion of the stipends allocated in barley for the parishes in the county of Renfrew are in terms of judgments pronounced by the Court of Teinds calculated according to the highest fiars prices of the county of Lanark. In the circumstances above narrated the petitioners are obliged to make this present application to the Court of Teinds for authority in terms of the above-quoted section of said statute to fix the fiars prices for barley of such of said adjoining counties as the Court shall determine as fiars prices as regards barley for the county of Dumbarton for the crop and year 1919 and succeeding years, and to authorise payment to the petitioners of said barley prices in terms of their respective localities as if the said prices had been struck for barley at the Fiars Court for the County of Dumbarton.”

The answers set forth—“. . . Explained further that the quantities of barley commonly grown in Dumbartonshire are generally not very large, inasmuch as the quality of the crop produced in the shire is generally not very good. In particular it is generally of a lower quality than crops of barley produced in the immediately adjoining counties of Lanark and Stirling, and it is also generally of a lower quality than crops of barley produced in the county of Argyll, which also immediately adjoins Dumbarton. Taking an average for the seven years down to 1918 the prices obtained for Dumbartonshire barley were £2, 4s. 10d. per quarter, while those obtained in the other counties mentioned were as follows—Lanarkshire, £2, 11s. 7d.; Stirling (a) Kerse, £2, 10s., and (b) Dryfield, £2, 9s. 4d.; and Argyll, £2, 8s. 3d. For the crop and year 1919 the fiars prices for barley in the said three counties are as follows—Lanark, £5, 2s. 4d.; Stirling (a) £5, 12s. 6d., and (b) £5, 10s. 3d.; Argyll, £5, 3s. 9d. Explained further that in the present year a considerable number of farmers are growing barley in the county of Dumbarton, so that no difficulty should be experienced in obtaining returns of prices for crop 1920. Having regard to the foregoing facts, the respondents submit that it would be most inequitable if the prices for barley for Dumbartonshire were to be fixed according to the highest fiars prices of any one or more of the said adjoining counties, and, in particular, if the said fiars prices were to be so fixed not only for the crop and year 1919, but also, in terms of the prayer of the petition, for succeeding years. The result of any such order would

be not only that they would have to meet a higher liability in respect of stipends for crop and year 1919 than the circumstances of the county properly warrant, but also that this higher liability would be stereotyped against them."

Argued for the petitioners—The present petition was rightly brought under section 12 of the Act 48 Geo. III, cap. 138; "such parish" meant parish in which in terms of the earlier sections the stipend had been modified, which was the case here. The petitioners would consent, with regard to succeeding years, to an interlocutor fixing a standard of adjoining counties only for years in which no standard value for Dumbarton could be obtained.

Argued for the respondents—The section in question only applied when a stipend was modified in the course of a process of modification, augmentation, and locality—Elliot on Teind Court Procedure, p. 221—and therefore did not apply to the present case. If so, the petition should have been to the *nobile officium*. On the merits no decree should be pronounced which would stereotype the prices for future years when circumstances might be quite different, or for years where a standard could be obtained from Dumbartonshire itself. There was no warrant for a decree operating beyond the year in question.

LORD PRESIDENT (CLYDE)—[*After dealing with a point with which this report is not concerned*].—Again, it was argued by the respondents that section 12 of the Act of 1808 can only be resorted to by the Court in connection with and as part of a decree of modification. I do not think that can be said to be either the intention or the effect of the Act of 1808, but in any case it is not disputed that the power of the Court of Teinds as a supreme Court covers the topics dealt with in section 12 and enables it to grant such remedy as is here applied for even if the technical objection taken on section 12 were well founded.

There remains, accordingly, only to consider what form the order ought to take. It ought, following the phraseology used in section 12, to be an order which fixes and specifies the county of Stirling as the county according to the highest fiars price of which (for barley) the value of the stipend is to be paid in money.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I concur.

LORD CULLEN—I also concur.

LORD SANDS—I concur. The only question of real importance here is as to future years. In the Renfrewshire case the Court directed that stipends were to be paid in future according to the fiars prices of Lanarkshire. I think that with absence of any opposition there was practical sense and convenience in that course, because when the growth and sale of barley are reduced to the limits which obtain in Renfrewshire—and apparently now obtain in Dumbartonshire—it is somewhat farcical

to go on fixing fiars prices with perhaps only one field grown or one parcel sold. In these circumstances this course does not seem to me to accord with a general system of striking the fiars as being average prices. But we cannot assume that this will be the state of matters in Dumbartonshire in the future. It is in the hands of the Sheriff, and it must be for him in each year to judge whether there is grain of good quality in sufficient quantity grown and sold in the county to justify him in striking an average price for that year.

LORD PRESIDENT—The point mentioned by Lord Sands is important. The order will be framed so as to provide for the contingency of a barley price being fixed in a future year for Dumbarton as his Lordship has suggested.

The Court pronounced this interlocutor—

"... In respect that no fiars price for barley has been struck in the county of Dumbarton for crop and year 1919, appoint and fix the highest fiars price of barley of the county of Stirling for crop and year 1919 and succeeding years when no fiars price for barley is struck for the county of Dumbarton, according to which the portions of the stipends due to the ministers of the parishes in the county of Dumbarton allocated in barley shall be paid. . . ."

Counsel for the Petitioners—Watson, K.C.—Dickson. Agents—Drummond & Frazer, S.S.C.

Counsel for the Respondents—Gentles—Agents. Macrae, Flett, & Rennie, W.S.

COURT OF SESSION.

Wednesday, June 9.

SECOND DIVISION.

(SINGLE BILLS.)

M'MURRICH v. HOLMES.

Process—Mandatory—Defender, Appellant in Appeal, having Gone to the Colonies.

In an action of seduction and filiation the pursuer had obtained decree in the sheriff court, and the defender had appealed to the Court of Session and thereafter had gone to Canada. The pursuer had arrested £124 belonging to the defender, and moved for his being ordained to sist a mandatory. The Court ordained the defender to sist a mandatory.

Jeanie Holmes, Kilbarchan, *pursuer*, brought an action in the Sheriff Court at Paisley, against John M'Murrich, ploughman, Kilbarchan, *defender*, in which she craved damages for seduction and inlying expenses, and alimony of an illegitimate child. On 3rd February 1920 the Sheriff-Substitute (BLAIR) found the pursuer entitled to £100 as damages for seduction, £3, 3s. as inlying expenses, and £12, 14s. annually for