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.

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## 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 aliment 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

fourteen years as aliment for the child. The defender appealed to the Court of Session, and the pursuer lodged a note in which she stated, *inter alia*—"The defender, who is a domiciled Scotsman, had been resident in this country for several years before the action was raised, and he remained in Scotland until about the month of March last. The pursuer and respondent has just learned that he then left for Canada, where he has now taken up his permanent abode. He has no heritable property in Canada." She craved the Court to ordain the pursuer and appellant to sist a mandatory. On the case appearing in the Single Bills of the Second Division counsel for the pursuer moved in terms of the prayer of the note. It was admitted at the bar that the pursuer had arrested on the dependence of the action £124 of the defender's funds.

Argued for the pursuer—The defender should be ordained to sist a mandatory—*D'Ernesti* v. *D'Ernesti*, 1882, 9 R. 655, *per* Lord Shand at p. 658, 19 S.L.R. 436; *Young* v. *Carter*, 1906, 14 S.L.T. 411 and 829; Mackay's Manual, p. 235; Shand's Practice, p. 159. In *Florence* v. *Smith*, 1913 S.C. 393, 50 S.L.R. 267, where the motion was refused, the defender had been assoilzied, and had left the country *bona fide* for the purposes of his business.

Argued for the defender —The motion should be refused. The sisting of a mandatory lay in the discretion of the Court, and in the case of a defender that discretion was liberally interpreted—*Simla Bank* v. *Home*, 1870, 8 Macph. 781, 7 S.L.R. 487; *Aitkenhead* v. *Bunten & Company*, 1892, 19 R. 803, 29 S.L.R. 659. In the present case the pursuer had arrested £124 of the defender's funds, which would more than cover the expenses.

The Court—LORD JUSTICE-CLERK, LORDS DUNDAS and SALVESEN—without delivering opinions ordained the defender to sist a mandatory.

Counsel for the Pursuer and Respondent—J. M. Hunter. Agents—Pairman, Miller, & Murray, S.S.C.

Counsel for the Defender and Appellant—Crawford. Agents—Laing & Motherwell, W.S.

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*Thursday, June* 10.

## FIRST DIVISION.

[Sheriff Court at Stirling.

## CORSAR *v.* ARCHIBALD RUSSELL LIMITED.

*Master and Servant—Workmen's Compensation—Industrial Disease—Certificate of Certifying Surgeon — Workmen's Compensation Act* 1906 (6 *Edw. VII, cap.* 58), *sec.* 8.

A certifying surgeon certified on 3rd July that a workman was then suffering from ulceration of the corneal surface of the eye, and that disablement commenced on 21st April preceding; he further stated in the certificate as a leading symptom of the disease that the workman had lost his eye as the result of corneal ulceration. The eye had been removed on 9th June. An appeal to the medical referee was dismissed by him. *Held* (*dis.* Lord Cullen) that the certificate, being upon questions which were for the medical men to decide, was a valid certificate for the purposes of section 8 (1) (i) of the Act.

*Opinion per* Lord Cullen that the certificate was invalid, as the workman could not continue to suffer from a disease affecting an organ after it had been removed, and that the certificate being defective was not remedied by the subsequent dismissal of the appeal to the medical referee.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), enacts, section 8—"(1) Where (i) the certifying surgeon . . . certifies that the workman is suffering from [a scheduled industrial] disease . . . and is thereby disabled from earning full wages at the work at which he was employed, or . . . and the disease is due to the nature of any employment in which the workman was employed within the twelve months previous to the date of disablement . . . he . . . shall be entitled to compensation under this Act as if the disease . . . were a personal injury by accident arising out of and in the course of that employment." . . .

James Corsar, *appellant*, being dissatisfied with an award of the Sheriff-Substitute at Stirling (DEAN LESLIE) in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), took an appeal by Stated Case in which Archibald Russell, Limited, coalmasters, Glasgow, were *respondents*.

The Case stated—"The following *facts* were proved or admitted—The appellant, who is forty-one years of age, was on or about 21st April 1919, and within twelve months previous thereto, employed by the respondents as a labourer at their Millhall Colliery, Stirlingshire. He worked at breaking up blocks of pitch for the making of briquettes. On the said date the pursuer left his employment. The respondents' foreman knew that he was doing so because of the condition of his eyes arising from his work. He consulted a doctor, who advised him to go to the Glasgow Eye Infirmary. He thereupon entered the said hospital and remained for five weeks, when he was advised that his right eye ought to be removed. He hesitated to submit to the operation and left the hospital. He stayed at home for two days and then returned to the hospital. His eye was removed on 9th June 1919. On 3rd July 1919 he obtained from Dr J. H. Murray, a certifying surgeon appointed under the Factory and Workshops Act 1901 for the district of Stirling, the certificate No. 4/2 of process. The certificate is in these terms—'I hereby certify that, having personally examined James Corsar on the 3rd July 1919, I am satisfied that he is suffering from a disease to which the Workmen's Compensation Act applies, namely,