

1815.

 LISTER
 v.
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 Dec. 4, 1799.
 Feb. 3, 1801.
 May 23, 1804.

former occasion, his right to the teinds, having gone amissing, the Lord Ordinary approved of the locality. He represented against this interlocutor, but his Lordship adhered; and, having made avizandum to the Court, the Court approved of the locality and decerned. On reclaiming petition the Court adhered.

And against these interlocutors the present appeal was brought to the House of Lords.

In the meantime, and in the year 1806, the minister of the parish of Kilmacolm raised a new process of augmentation, in which a decree of modification having been pronounced, the cause was remitted to the Lord Ordinary to prepare the locality.

The appellant in the interval had discovered certain of his title-deeds, which had been lost on the former occasion, and which placed the matter of right to his teinds beyond dispute.

The Lord Ordinary, by a special interlocutor, found that these writings established a right to the teinds; but as the matter was already *sub judice* of the House of Lords, he sisted procedure.
 May 24, 1812.

After hearing counsel in the House of Lords,

It was ordered and adjudged that the cause be remitted back to the Lords of Council and Session in Scotland, as Commissioners for Plantation of Kirks and Valuation of Teinds, to review the said several interlocutors complained of in the said appeal.

For the Appellant, *Sir Samuel Romilly, William Buchanan.*

NOTE.—Unreported in the Court of Session.

GEORGE LISTER, Executor of William }
 Henry Anderson, son of the deceased } *Appellant;*
 Henry Anderson, Builder and Mason in }
 Grenada, }

JAMES SUTOR, Mason in Rothes, County }
 of Elgin, } *Respondent.*

House of Lords, 24th February 1815.

PARTNERSHIP—ACCOUNTING—ADJUSTED AND SETTLED ACCOUNT
 —Circumstances in which a party was entitled at the distance of years, and after his claims in the executry had been adjusted and settled, to insist that a certain heritable estate belonged to

the partnership, not included in the former account so adjusted and settled, should be held as falling under the partnership, so as to entitle him to make this further claim. Held him entitled to a share in the heritable estate. Affirmed in the House of Lords.

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Henry Anderson and John Sutor carried on, in the Island of Grenada, a partnership as builders and masons; and the question was, whether a plantation in Demerara, called Prospect Estate, belonged to the partnership equally, or to Henry Anderson, one of the partners, as an individual.

Both partners were now dead, and their estates in the hands of executors and their administrators appointed by will.

The executors of Henry Anderson had acted upon the footing that the Prospect Estate exclusively belonged to Henry Anderson, and had actually settled with the executors of Mr Sutor, as was evidenced by an account current between the executors and Anderson's estate, bringing out a balance as due Sutor's executors of L.2238, which was paid and settled without any reference to the Prospect Estate in the account, but, which was made out on the footing that he had no interest therein. Matters stood thus, until, after the distance of fifteen years, a claim was made by the respondent to an equal share of it as partnership funds and effects. It was stated in answer that there was a settled account signed by Mr Innes, one of the executors of Mr Sutor, which put an end to the present claim.

The chief evidence produced to show that the Prospect Estate belonged to the partnership, consisted of a power of attorney, signed both by Henry Anderson and John Sutor, the partners, wherein they empowered Joseph Innes "to see and dispose of our just and equal half share of the cotton estate aforesaid called Prospect," and to uplift all debts due to the copartnership. There were also letters and correspondence which established that the interest which Mr Sutor had in the Prospect Estate, was only a third share.

The Lord Ordinary found that one-half of the Prospect Estate was partnership concern, and belonged to them in the proportion of two-thirds to Mr Anderson, and one-third to Mr Sutor. On reclaiming petition, the Court pronounced this interlocutor:—"Adhere to the interlocutor of the Lord Ordinary reclaimed against, in so far as it finds that the land property of the Prospect Estate in Demerara was a company concern, and held in the proportion of two-thirds as belonging to Henry Anderson, and one-third belonging

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“ to John Sutor ; and remit to the Lord Ordinary to proceed accordingly.”

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellant.—It appears from an account current produced, that this account was settled by Joseph Innes, the executor, as well of the will of Sutor as of Anderson, on the 15th July 1797, and a sum of L.2238 currency, was then paid to Innes, upon the footing that Sutor had no concern in the Demerara Estate, which settlement, if it could be opened up after the lapse of so many years, could only be upon evidence of the strongest kind ; but it is admitted by the respondent himself, that the evidence upon which he relies is neither full nor direct, nor is it sufficient to establish his right, even if it were now open to discussion, while, on the other hand, there is evidence sufficient to negative the claim he now makes, which, if it could have been supported, it is impossible to believe would have been so long delayed.

Pleaded for the Respondent.—The only point in dispute is the simple fact, Whether the purchase and possession of one-half of the plantation called Prospect, in Demerara, was or was not a purchase and possession by the partnership or society of Anderson and Sutor ; and, consequently, for the material behoof of the two partners, in the same proportions in which the other profits arising from their partnership, were divided ? And of the affirmative of this fact, there is sufficient reasonable evidence produced in a matter where the *locus contractus* was distant, and as to which the period is remote. Nor is the weight of the evidence to be diminished, but, on the contrary, it is to be more highly esteemed, when it is considered that the poverty of the respondent, and the distance of his residence, have given to William Henry Anderson a very decided advantage, in the recovery of documents, and in the investigation of truth, he, Mr Anderson, having himself been in the West Indies during a considerable part of the progress of the litigation, while the respondent was confined to the north of Scotland.

After hearing counsel,

It was ordered and adjudged, that the interlocutor of the 14th May 1811, and the other interlocutors complained of, so far as they are consistent with the interlocutor of 14th May 1811, be, and the same are hereby affirmed : and it is further ordered and adjudged, that such other

interlocutors, so far as the same can be considered as inconsistent with that of the 14th May 1811, be, and the same are hereby reversed: and it is further ordered that the cause be remitted back to the Court of Session, further to proceed therein, as is consistent with this judgment.

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STEWART
v.
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For the Appellant, *John Leach, M. Nolan.*

For the Respondent, *Sir Saml. Romilly, P. J. Gordon,*
James Abercromby.

NOTE.—Unreported in the Court of Session.

ARCHIBALD M'ARTHUR STEWART of Ascog, - *Appellant*;
JOHN KER, W.S., Common Agent in the
Locality of Eddleston, - - - - *Respondent.*

House of Lords 27th February 1815.

LOCALITY—RIGHT TO TEINDS.—In a locality of the minister's stipend of the parish of Eddleston, it was objected to the appellant's titles, that no right to teinds was conveyed by the dispositive clause of his disposition, although mentioned in another clause of the deed. Held by the Court of Session, that he had no right to the teinds of the lands: reversed in the House of Lords.

This was a locality of the stipend of the parish of Eddleston following an augmentation of the minister's stipend, in which the appellant claimed a right to the teinds of his lands, so as not to be localled on as an heritor having no right to teinds, but only with the titular himself, and other heritors having right to teinds.

It appeared that the appellant had acquired his lands of Whitebarony from Sir Alexander Murray of Blackbarony. Sir Alexander's ancestors had acquired in 1593 the whole tithes of the parish, by a lease for a certain number of lives, and then for a long period after the termination of these lives. In 1688, Sir Alexander acquired from the Countess of Traquair the advocation, donation, and right of patronage of the parish church and patronage of Eddleston, and as such, it was stated he acquired right to the whole tithes of the parish not heritably disposed by the Acts of the Scottish Parliament, 1690, c. 23, and 1693, c. 25.

Sir Alexander Murray disposed to Mr Stewart, in 1732,