aside the settlement, and made the son a liferenter. Now, as against that opinion the appellants relied on three propositions—first, that the power was not intended to be exercised over the heir, but only over the other children. If not formally abandoned, however, that point was not seriously insisted in. The second proposition, in which there was considerably more probability, was that the truster intended that the power should be exercised during the minority of his children only, and not after their majority. It was said that although the codicil postponed the time at which the estate was to be conveyed to his eldest son from his attaining majority, as provided by the settlement, until he had attained the age of twenty-five years, it did not follow that it was intended also to extend the time during which the power might be exercised to the same period. I was at one time considerably impressed with that argument, but have since seen that it was not well grounded. Had the will declared that the power should only be exercised up to majority, the codicil would not have extended its exercise beyond that period; but the will speaks of that power only with reference to the time at which the estate is to be conveyed. It therefore follows that, according to the true construction of this settlement and codicil, the time for the conveyance of the estate having been extended to the son's attaining the age of twenty-five years, the time during which the power might be exercised was extended to the same period. Now, in the third place, as to the effect of the approval of the trustees. It is quite clear that by the law of England the trustees could not divest themselves of the power, and I believe there is no difference in the law of Scotland. It certainly seems a very strange proposition that a power which is given to trustees for children could be given up by them. I pass on, however, from this, because I think the trustees never did divest themselves of this power. They consented to the settlements, but what are they? Why, simply a conveyance by the eldest son of all his interest under the trust-settlement of his father. On these short grounds I beg to advise your Lordships to affirm the interlocutor, and to dismiss the appeal with costs.

Lord CHELMSFORD—I entirely agree with the Lord Ordinary and the majority of the Judges of the First Division. Three propositions have been submitted in opposition to it. First, that the exercise of the power was not to extend over the eldest son—a point which was not insisted upon. Secondly, to what time was the exercise of this power limited? The settlement declared that time to be the son's majority; but then came the codicil, which declared that the estate should not be conveyed to the son till he had attained the age of twenty-five. It was argued that though the term for conveying the estate was thus postponed, the exercise of the power was not extended. But the time at which the trustees were to divest themselves of the estate was that at which they were to determine whether it should be conveyed to the son in liferent or in fee. Nor does there seem any reason why it should have been in the power of the trustees to exercise the power finally before the son had attained majority. His conduct up to that time might have been such as to resolve them to confine his interest to a liferent; while before he reached twenty-five and could take the estate his conduct might have been of a perfectly opposite character. The most important question, however, which arises is, whether the trustees *could* divest themselves of their right to exercise this power, and if so, whether they did do so in fact. I am of opinion that such a power as this—a power coupled with a duty—could not, under any circumstances, be surrendered by them. Even assuming that they could, however, I think they did not consent to that settlement, their names as consenting parties having been purposely omitted. Even if they did so consent, however, that would make no difference, because all the parties knew that these settlements were subject to a contingency. I therefore agree that the interlocutor should be affirmed.

Lord KINGSDOWN—I concur.

Interlocutor affirmed, and appeal dismissed with costs.

COURT OF SESSION.

Tuesday, Feb. 27.

FIRST DIVISION.

THORBURN *v.* THORBURN.

Husband and Wife—Expenses. Although a husband is liable for his wife's expenses in an action against himself, he is not liable to pay the expense of unnecessary litigation on her part.

Counsel for Pursuer—Mr Fraser, Mr Mair, and Mr Rampini. Agent—Mr William Officer, S.S.C.

Counsel for Defender—Mr Alexander Blair. Agents—Messrs Hunter, Blair, & Cowan, W.S.

This is an action of aliment by a wife against her husband. The pursuer claimed £100 a year, and the defender alleged that in consequence of the intemperate habits and violence of his wife he had been obliged about a year ago to remove her from his house, and that he had since paid her £1 a week which was sufficient for her comfortable support and maintenance as his wife. The pursuer pleaded that the defender's statements as to her intemperance and violence were irrelevant. The Lord Ordinary (Mure) repelled this plea *hoc statu* "reserving to consider, when the proof is being led, whether any portion of the defender's statement is irrelevant or not pertinent to the defence." The pursuer reclaimed, but the Court adhered.

On the motion of the defender the Court farther found that the expenses incurred by the pursuer since the date of the Lord Ordinary's interlocutor should not form a charge against the defender, the Lord President observing that though a husband must pay his wife's expenses in such actions as this, that was no reason why he should be made to pay the expense of unnecessary litigation on her part.

BRITISH FISHERIES SOCIETY *v.* HENDERSON.

Police Assessment—Exemption. Suspension of a general police assessment in a county on the ground that the parties charged appointed and paid, under special Acts, police constables of their own, *refused*, there being no exemption in their favour either express or implied.

Counsel for Suspenders—Mr Clark and Mr Duncan. Agents—Messrs Horne, Horne, & Lyell, W.S.

Counsel for Respondent—The Solicitor-General and Mr Millar. Agent—Mr G. L. Sinclair, W.S.

This is a suspension of an assessment sought to be levied from the complainers as owners of the harbour of Pulteneytown by the Commissioners of Supply for the county of Caithness, in virtue of the powers conferred by 20 and 21 Vict., cap. 72, to establish a police force in the county. The ground of suspension was that under various private Acts under which the complainers are incorporated, they had the power to appoint, and had in point of fact appointed, police constables of their own. But neither the private Acts nor the public Act conferred any exemption on the complainers from the assessment complained of, and the Lord Ordinary (Jerviswoode) refused the suspension, there being no presumption in favour of special pleas of exemption from taxation. He was unable to observe any statutory provision adequate to secure the exemption claimed. It might be that under this view the complainers were more heavily burdened as respects the matter of police than others around them; but the local causes, the existence of

which has led the Legislature to confer special powers on the complainers to keep up a constabulary of their own within certain limits, may be such as not, even in equity, to lead to the conclusion that they ought in consequence to be exempted from the more general county assessment.

The suspenders reclaimed; but the Court to-day, without calling for a reply, adhered.

DEWAR *v.* PEARSON AND JACKSON.

Proof—Reference to Oath—Competency—16 *Vict. c.* 20. Held that where defenders were examined by a pursuer as witnesses on one branch of a case, another branch of it was afterwards competently referred to their oath, notwithstanding the terms of section 5 of 16 Vict., cap. 20.

Counsel for Advocator—Mr Gordon and Mr Scott. Agent—Mr David Crawford, S.S.C.

Counsel for Respondent—Mr Patton and Mr Thoms. Agent— Mr W. Officer, S.S.C.

This was an action by a clerk for payment of a sum of £445, 5s. 8d. in name of salary or wages due to him from 1852 to 1860. The defenders pleaded prescription. The Sheriff sustained this plea in so far as regarded the period anterior to June 1858, and found that this part of the claim could only be proved by writ or oath. In regard to the other portion the pursuer was allowed a proof *pro ut de jure*. In the course of the proof *pro ut de jure* the defenders were examined as witnesses. The pursuer thereafter referred the constitution and resting-owing of the claim sued for prior to June 1858 to the oath of the defenders. Under this reference the defenders were examined, and the Sheriff held the oaths affirmative.

Mr Pearson advocated and pleaded that the reference to oath was incompetent. He founded on 16 Vict., cap. 20, sec. 5, which provides that "it shall not be competent to any party who has called and examined the opposite party as a witness, thereafter to refer the cause, or any part of it, to his oath:" and founded on the case of Renny *v.* Will, July 18, 1863 (not reported, but mentioned in Dickson on Evidence, second edition, note to section 1711).

The Court refused to give effect to this plea, and remitted to the Sheriff *simpliciter*.

The LORD PRESIDENT thought the object of the statute was to prevent a person being subjected to a re-examination in regard to the same matter; and that it provides that one cannot refer to a person's oath what he has been previously examined about as a witness in the case. The prohibition may even extend to anything which he might competently have been examined about when he was in the witness-box. But what was referred here was a matter as to which the defenders were not and could not be examined as witnesses.

Lord CURRIEHILL thought the words of the statute were certainly in favour of the advocator, but the construction he put on them was so unreasonable that it could not be adopted. It was, however, with the greatest difficulty that he concurred.

Lord DEAS thought the words of the statute might be literally in the advocator's favour, but that they were not so according to any reasonable construction. A cause may embrace half-a-dozen different things, and it never could be meant to exclude reference on a part of the cause on which a party had not been examined.

Lord ARDMILLAN concurred.

SECOND DIVISION.

TAYLOR *v.* MITCHELL.

Bill—Suspension—Partner. Suspension of a charge on a bill on the grounds—(1) that it was granted for the charger's accommodation; (2) that it was granted by one partner to another, for the purpose of raising money for the business of the copartnery; and (3) that the charger had agreed not to use diligence on the bill—*refused*.

Counsel for Suspender—Mr J. C. Smith. Agent—Mr W. Spink, S.S.C.

Counsel for Respondent—The Solicitor-General and Mr Millar. Agent—Mr John Henry, S.S.C.

This is a suspension of a charge upon a bill. In the year 1862 the suspender became a partner with the respondent in an iron foundry business, but having nothing to put into the capital of the business, and it being necessary to raise money for the company's concerns, he accepted a bill for £717, 10s., which was drawn upon him by the respondent, as the share of the stock which he contributed to the company. Part of the bill was paid by the suspender, and the charge was made for payment of the unpaid balance. The grounds of suspension maintained were—(1) That, assuming the suspender to be due a balance on the bill, he was not liable to diligence therefor, in respect that the bill was an accommodation one, which was truly accepted for the benefit of the respondent; (2) that a member of a joint adventure or partnership concern is not entitled to use summary diligence against a co-partner for any balance of copartnery funds while the state of the affairs of the concern is not ascertained, according to the rights of parties; and (3) that the diligence was contrary to the agreement of parties, by which the complainer was to liquidate his obligation only as he was able. The Lord Ordinary on the Bills passed the note, and liberated the suspender from prison, giving effect to his plea, that the understanding between him and the respondent was that he was only to be called upon to pay as he got up his money to do so, and also to the plea founded on the yet unascertained rights of parties. To-day the Court recalled this interlocutor, and remitted to the Lord Ordinary to refuse the note. The Court were of opinion that the first defence, which could only be proved by the writ or oath of the respondents was not only not so proved, but was disproved by the writ of the suspender himself. The second defence was inapplicable to the facts of the case, the charge being for a remainder of debt, for the one-third of the property acquired by the suspender in 1862 for the company concern; and as to the third defence, there was no evidence of any such agreement as was alleged by the suspender.

Wednesday, Feb. 28.

COURT OF TEINDS.

COWAN *v.* COOK AND OTHERS.

Teinds—Valuation—Approbation—Dereliction. Circumstances in which held that an heritor's right to obtain approbation of a sub-valuation of teinds made in 1862 had not been lost by dereliction.

Counsel for Pursuer—Mr Clark and Mr Shand. Agent—Mr James Dalgleish, W.S.

Counsel for Defender—Mr Cook. Agents—Messrs W. & J. Cooke, W.S.

This is an action of approbation of a sub-valuation of the teinds of the lands of Boghall at the instance of William Cowan, Esq., of Linburn, against Mr Cook, the minister, and Lord Hopetoun, the patron and the titular of the teinds of the parish of Bathgate. The sub-valuation was made in the year 1629, when the teinds were valued at 440 merks, or £24, 8s. 10d., being one-fifth part of 2200 merks, or £122, 4s. 5d. The action was opposed by the minister, who pleaded that Mr Cowan was not now entitled to obtain the approbation of the valuation by reason of dereliction of the right so conferred on him. The Court to-day repelled this plea and pronounced decree of approbation as concluded for. The judgment of the Court was delivered by

The LORD PRESIDENT, who said—The length of time which has elapsed since 1629 is clearly no objection to the approval of this valuation. There is no prescription in regard to such a matter. It is