years. It appears that the pursuer wished after his father's death to induce his mother Lady Riddell to abate her provision of £1000 a-year. For this purpose a memorandum was prepared by Mr Barstow on the part of and with the knowledge of the pursuer; and in that "memorandum of rental and burdens," immediately following "Lady Riddell's jointure £1000," is "Mrs Cunliffe—interest of £6000, at 9 per cent., £240." This view of the "burdens" was intended to induce, and actually did induce, Lady Riddell to relieve the pursuer by abating £400 a-year of her provision. I cannot for a moment imagine that either Mr Barstow or the pursuer intended to deceive Lady Riddell into compliance by representing as a burden what they knew was not a burden. On the contrary I am satisfied that they believed the £6000 to be really a burden, as being a good provision to Mrs Cunliffe, well secured on the estate by the new entail. Therefore if the first and most extreme view stated by Mr Mackenzie is put aside as untenable, as I think it ought to be, there is in the conduct of the parties and the nature and circumstances of the procedure enough to show that the clause giving power to make provision to the extent of £6000 was fairly and effectually introduced into the new entail. But a second question arises. The deed complained of here is a marriage-contract, a deed of a peculiarly onerous character. At the date of this contract the former entail was at an end, and the estate stood on the investiture under this deed of entail. The marriage-contract, with the provision for the daughter of Sir James Riddell of £6000, was not in contravention of that entail. Nay, more, it was in accordance with its intent and its provisions. I am quite satisfied of the *bona fides* of the marriage-contract trustees and of Mr and Mrs Cunliffe. They were parties to this mutual contract, they accepted the provision, and became onerous creditors in the obligation, holders of a feudalised security. On what ground can that provision for a child, granted under circumstances which render it especially onerous, be reduced? Is it because the estate was entailed? Nay, but the entail permits it. The entail does not fetter beyond the prohibitions, and this provision is not prohibited. I say nothing in regard to a case of fraud or *mala fides* such as has been in the argument supposed. These defenders were in *bona fides*, and they are onerous creditors. It is not justice to their case even to illustrate it by putting the case of fraud or *mala fides*. There is nothing of the kind here. Accordingly I am, apart from the separate question in regard to the entail, of opinion that the provision of £6000 in the marriage-contract of Mr and Mrs Cunliffe cannot be reduced on the grounds here stated, and thus the defenders, who alone have appeared, ought to be assoilzied.

The Court recalled the Lord Ordinary's interlocutor, and in place thereof assoilzied the defenders who had appeared, with expenses; and in respect the pursuer did not insist on any judgment in regard to the absent heirs of entail, dismissed the action *quoad* them.

Agents for Pursuer—Hamilton & Kinnear, W.S.

Agents for Defenders—Hope & Mackay, W.S.

SECOND DIVISION.

PETITION—SCOTT.

Process—Divorce—Oath of Calumny. Circumstances in which the Court remitted to a commissioner to take a pursuer's oath of calumny in an action of divorce before the summons was called.

The petitioner, who was a sailor, brought a divorce against his wife. The action was not yet called in Court. He was about to proceed on a voyage which was likely to be of one year's duration, and would accordingly not be in the country when his oath of calumny would fall to be taken. In these circumstances he craved the Court to allow the oath to be taken during vacation before the Lord Ordinary on the Bills, or to appoint a commissioner before whom it might be taken, the deposition to lie *in retentis* until the case was duly called and enrolled.

J. A. Crichton supported the prayer of the petition, and relied on the cases of A. B. *v* C. D., 16 S. 1143, and Potts, 2 D. 248, as authorities in respect of which it should be granted.

At advising—

The Lord Justice-Clerk—There are two objections to the taking of this oath of calumny in the manner proposed—(1) that it is premature; and (2) that it is proposed to take it before some other person than the Lord Ordinary in the divorce process. Now, as to the second objection, the case reported in the 16th vol. of Shaw is a good authority, because there the objection was taken that the 36th section of the Act provides that the Lord Ordinary shall administer the oath of calumny, but notwithstanding the Court granted a commission, the party being resident in India. The other objection is that the proposed step is premature, the case not being in shape according to statute. But there is authority in the case of Potts for that also. No doubt the oath was there taken before the Lord Ordinary who was to be the Lord Ordinary in the divorce process, but it might readily have been otherwise. Taking these authorities together, I think we may grant a commission to take this oath that it may lie *in retentis* until the action is called before the Lord Ordinary, due notice being first given to the defender, and proof that such has been given produced before the commissioner.

The other Judges concurred.

The Court accordingly appointed a commissioner in terms of the prayer of the petition.

Agents for Petitioner—Webster & Sprott, S.S.C.

Thursday, July 12.

MACVICAR *v.* THE HERITORS OF MANOR.

Teinds—Minute of Surrender—Decree of Valuation. A surrender of teinds by an heritor in a process of locality refused to be sustained in respect the amount of his teinds was not ascertained by the decree of valuation on which he founded, and could not be ascertained without a process of division.

This is a question in a process of augmentation and locality at the instance of the minister of the parish of Manor against the heritors of the parish. In the process Mr Tweedie of Quarter made the following condescendence and surrender:—

1. The condescender, the said James Tweedie, is heritable proprietor of the lands of Hallmeadow, town of Manor, Glenrath, Hallmanor, Castlehill, Welshhouses, and mill lands of Manor, lying in the said parish of Manor, together with the teinds, parsonage and vicarage thereof, conform to—(1) Extract registered disposition and assignation by the trustees of his father the late Thomas