"It appears to the Lord Ordinary that justice would not be done to the defender, were he not found entitled to expenses of process. After the audits of the committee, and with no reason to doubt the good faith of the defender, such an action as the present ought never to have been raised. In the course of thirteen years' administration of matters involving a great deal of minute accounting, it would not be wonderful if some errors should have occurred in the details. But the mere suspicion of such being found formed no good grounds for throwing on the defender the *onus* of accounting as from the beginning for thirteen years' intromissions. If the new inspector, or his board, seriously thought that the accounts required investigation, they ought to have put them into the hands of an accountant of their own, or an accountant named in concert with the defender; and requested explanations from the defender, such as the defender from the first professed himself willing to afford. If in place of following this course, they recklessly involved the defender in an expensive litigation of years, on a rash offer to prove specific allegations of error, and in the end have utterly failed, it is nothing but bare justice that this should be at the cost of the unsuccessful pursuer, and not of the successful defender.

"On the other hand, it has not been disputed that the books kept by the defender were not of the full and satisfactory character which they ought to have possessed, and which, if they had exhibited, the accountant reports that the extent of the inquiry might have been materially lessened. The Lord Ordinary at first doubted whether on this account he ought not to impose a modification on the expenses found due to the defender. He ultimately settled in the conclusion, that the circumstance formed no justification either of the action being brought, or of its being persisted in to the effect of going to issue on alleged specific errors in the offered proof of which the pursuer has so signally failed. The committee of the board, and the Parochial Board through them, were, during the period of the defender's continuance in office, satisfied with the books as they were kept. The trivial clerical errors found out in the course of the inquiry and admitted as soon as pointed out, would most likely have all been discovered by the exercise of a little fair dealing. If, in place of following this course, the Parochial Board entered on the speculation of attempting by means of a law-suit, to fix on the defender liability for one or two thousand pounds, of which no part has turned out to be due by him, it is only right and fitting that they should have thrown on them the risk and cost of the adventure."

The interlocutor of the Lord Ordinary has been acquiesced in by the Parochial Board.

Counsel for Pursuer—Mr Fraser and Mr Scott. Agents—Wotherspoon & Mack, S.S.C.

Counsel for Defender—Mr Mackenzie and Mr MacLean. Agent—William Miller, S.S.C.

(Before Lord Ormidale)

KNOX *v.* YOUNG AND M'LEOD.

Expenses—Trustee in Bankruptcy. A pursuer of an action having been found liable in a sum of expenses, the decree for which was extracted, and having been thereafter sequestrated, the trustee on his estate sisted himself as a party to the action. Held (per Lord Ormidale and acquiesced in) that the trustee had not, by sisting, rendered himself liable for the expenses which had been decerned for.

In this case a question of fact was tried before the Lord Ordinary in regard to which the defenders were successful, and they were found entitled to expenses, which were taxed at £65, 6s. 3d. For this sum decree was pronounced on 18th July 1866 against the pursuer. This decree was extracted. But notwithstanding the settlement of this question, there were other points in the case left over for decision, and before they came to be discussed the pursuer was sequestrated. Intimation of the dependence of the process was made to the trustee, who sisted himself as pursuer. The defenders then moved that the trustee should be found liable in the expenses which had been decerned for, on the ground that by sisting himself he had become liable in all expenses, past as well as future, incurred in the action.

The Lord Ordinary (Ormidale), after hearing parties, pronounced the following interlocutor refusing the motion:—

"*Edinburgh, 11th December* 1866.—The Lord Ordinary having heard counsel for the parties on the motion for the defenders, that Mr Samuel Edgar Trotter, the trustee on the pursuer's sequestrated estate, sisted as a party to this action by interlocutor of the 4th instant, should be held liable, and decree given against him for the £65, 6s. 3d. decerned for against the pursuer by interlocutor of 18th July last: refuses said motion, and finds the defenders liable to Mr Trotter in the expenses incurred by him in relation to the present discussion, and modifies the same to the sum of £5, 5s., for payment of which to the said Mr Trotter decerns against the defenders.

"R. MACFARLANE."

"*Note.*—An elaborate argument was submitted to the Lord Ordinary in support of the defenders' motion, and the case of Torbet *v.* Borthwick, 23d February 1849, 11 D. 694, was cited as an authority in point. But in the opinion of the Lord Ordinary that case, and the principle which it illustrates, have no application to the circumstances in which the present motion has been made. It may be quite true, and taken as a settled principle, that a trustee sisted in the place of a bankrupt pursuer or defender is liable for the expenses of the process in which he is so sisted, incurred by his adversary, whether before or after the sisting, for the reason that he adopts the process, with all its risks, as regards expenses, so far as not previously determined, and nothing more was settled by the case of Torbet. That, however, is quite a different thing from holding a trustee liable for a sum of expenses for which decree was pronounced and extracted, as in the present instance, before he was sisted or became connected with the process at all. It was only to the depending process that the trustee, Mr Trotter, was sisted as a party; but for the £65, 6s. 3d. in question, decree having been pronounced and extracted, and diligence admittedly done before the sisting took place, there was no longer any depending process *quoad* that sum. Moreover, it would be incompetent and unprecedented to give a second decree in the same process for the same sum for which decree had been already pronounced and extracted. The Lord Ordinary being therefore of opinion that the defenders' motion is untenable, as well in reference to technical form and competency as sound legal principle, has had no hesitation in refusing it, with expenses, which, in order to save the ex-

pense of a remit to the auditor, he has modified to £5, 5s.

"R. M'F."

This interlocutor was acquiesced in by the defenders.

Counsel for Trustee—Mr F. W. Clark. Agent—L. Mackersy, W.S.

Counsel for Defenders—Mr Pattison and Mr George M'Ewan. Agent—William Mason, S.S.C.

(Before Lord Ormidale.)

SANDERSON AND OTHERS *v.* OFFICERS OF STATE.

Crown—Succession Duty—Declarator of Legitimacy—Competency. Persons charged with succession duty on the footing that they were illegitimate children raised an action of declarator of legitimacy calling the Officers of State as defenders. Held (per Lord Ormidale and acquiesced in), that the action was incompetent, as the Officers of State did not represent the Crown in matters of revenue.

Moses Jacob died in 1865, leaving a settlement dated in 1854, by which he bequeathed his estate to trustees for division among *inter alios* the pursuers, who are therein described as his natural children. After his death the pursuers tendered payment to the officers of Inland Revenue of succession duty at the rate payable by children—namely, 1 per cent. This was declined on the ground that ten per cent. was payable, the pursuers not being lawful children. Proceedings were then taken at the instance of the Lord Advocate in the Court of Exchequer for recovery of the duty; and the pursuers thereupon raised this action against the Officers of State to have their legitimacy declared. They averred that their parents were married by cohabitation and habit and repute.

The defenders pleaded that the action as against the Officers of State was incompetent and irrelevant, they not representing the Crown in regard to matters of revenue. Lord Ormidale sustained this plea, and dismissed the action with expenses.

The pursuers acquiesced.

Counsel for Pursuers—Mr Webster. Agent—James Finlay, S.S.C.

Counsel for Defenders—Mr Scott. Agent—James Hope, W.S.

BILL CHAMBER.

(Before Lord Mure.)

LOVE AND OTHERS *v.* CAMPBELL AND OTHERS.

Poor—Assessment—Exemptions — Suspension. A suspension to interdict the collection of poor rates in a parish on the ground that the Parochial Board had resolved to grant exemptions in a manner said to be illegal, *refused.*

This was a suspension and interdict presented by certain ratepayers in the parish of Stevenston against the Parochial Board of that parish, whereby it was sought to "interdict, prohibit, and discharge the respondents as representing the Parochial Board of the parish of Stevenston, from collecting the assessment for relief of the poor of said parish for the year from 5th August 1866 to 5th August 1867, from one class of the ratepayers alone, and, in particular, from exempting from payment of said assessment in said parish for said year all tenants under £4 of rental, as a class, and without reference or inquiry into the special circumstances of particular claims to exemption, or from in any way carrying into effect the resolution to relieve such tenants as a class from payment of said rates adopted at a meeting of the Parochial Board of said parish of Stevenston, held on 2d November 1866."

The ground of suspension was that the resolution was illegal. The respondents answered that it was warranted by section 42 of the Poor Law Act, which authorised Parochial Boards to exempt any persons or class of persons on the ground of inability to pay.

The Lord Ordinary (Mure) refused the note, with expenses. The following is his

Note.—As the object of this suspension is not so much to obtain exemption from payment of an assessment, for which the complainers allege they are not legally liable, as to try the legality of a resolution of the Parochial Board of the parish of Stevenston relative to the manner in which the assessment in that parish is to be laid on and levied, and in the meantime to interdict the Board from carrying out that resolution, the Lord Ordinary doubts whether the complainers have a title to try that question, at least in a suspension. But, assuming the title and interest to be sufficient, the Lord Ordinary does not think he would be warranted in passing the note and granting interim interdict, when neither caution nor consignation is offered, especially in the case where, as here, the mode of levying complained of appears to have been acted on without objection for several years.

The suspenders acquiesced.

Counsel for Complainers—Mr W. M. Thomson. Agent—John Ross, S.S.C.

Counsel for Parochial Board—Mr John Burnet. Agent—John Thomson, S.S.C.

Tuesday, Feb. 12.

FIRST DIVISION.

RAMSAY *v.* RAMSAY.

Husband and Wife—Divorce—Goods in Communion—Paraphernalia. In an action by a wife against her husband, whom she had divorced, for her share of the goods in communion and for delivery of her *paraphernalia*, Held that she had failed to prove that there were goods in communion at the dissolution of the marriage, or that the defender had carried off any of her *paraphernalia.*

This was an action at the instance of Margaret Anderson Dewar or Ramsay, Cupar-Fife, against Peter Ramsay, jun., Woodhaven, for £500, or such other sum as shall be found to have been the pursuer's share of the goods in communion at the dissolution of the marriage betwixt her and the defender by divorce on 9th March 1860, and also for delivery of her gold watch and other paraphernalia. The defence was that when the marriage was dissolved there were no goods in communion in existence, and that if there were any paraphernal goods they were not in the defender's possession. The Lord Ordinary (Kinloch), after a proof, assoilzied the defender, observing in his note:—"The question for proof was not what amount of funds the pursuer possessed when she married the defender in June 1851, but what funds were extant and formed goods in communion at the dissolution of the marriage by the decree of divorce of 9th March 1860. The pursuer has failed to establish any specific amount of funds then existing. The evidence, which is very contradictory, raises a