

cular, were to have nothing to do with the composition arrangement of 1851. Whether they had or not is to be determined, not by an assumption one way or other, but by a sound construction of the terms "sums expended on capital account in connection with the Barrhead Railway." The whole question lies here.

The pursuers have not satisfied me that the present claim is comprehended in these words. I think that if it had been intended to comprehend this allocation of stock under the name of a "sum expended," it would have been clearly and unequivocally so stated. This, it very plainly is not. The sum claimed is not a "sum expended," except by a construction which I cannot help considering somewhat forced. I do not think it, in any sound sense, a sum expended "on capital account." These words, I think, do not allude to any capital account kept by the Caledonian Company, nor indeed to any account, considered as a document kept either by one Company or another. An expenditure "on capital account," I consider merely to express the kind of expenditure, and to denote it as that which properly and usually comes out of capital. The sums laid out by the Caledonian Company in the construction and improvement of the Barrhead line clearly come under this category. But I do not think the claim now made can be reasonably brought under the description. Finally, I do not think that what is now sought is "repayment" in any sound sense. Repayment is the counterpart of payment—it is the undoing of what payment effected. What was done by the Caledonian Company was not to pay money, but to allocate Caledonian stock. It is not now proposed to cancel the stock so issued to the extent of one-half, which is the only act which, in the circumstances, would be correctly called repayment. The whole stock of £82,500 is to remain with the Barrhead shareholders, as issued. The Caledonian Company are not to be relieved from the half of this stock, but they are to have £41,250 of actual present cash put into their pockets, to do with and dispose of as they please. I cannot consider this "repayment" in any reasonable, or in the statutory sense.

It cannot but be held somewhat confirmatory of these views, that in two several accounts rendered by the Caledonian Company to the South-Western, posterior to the vesting, and in which the sums actually expended on the line are comprehended, no mention is made of the claim now put forward. This may not be by itself conclusive; but in a matter of doubtful construction it is, to say the least, a strong circumstance against the interpretation of the pursuers.

My conclusion is, that the pursuers have not satisfactorily established their claim in the present process. Whether or to what effect these arrangements of 1851 were taken into view when the transaction of 1869 was concluded, we have, as already said, no evidence to show, except what lies in the words employed in section 4 of the Act 1869. I have a strong impression that these arrangements were wholly thrown out of sight in the transaction of 1869, the rent simply being taken at the current rate of £11,437, 10s., without the South-Western Company being in any way implicated in the allocation of Caledonian shares, by which the reduction was obtained in 1851. Any glimpses we have of the negotiations lead towards this inference. But, at any rate, the pursuers are bound to make it clear that the claim now urged falls by legitimate construction under the words employed in section

4. In my apprehension, they have not succeeded in doing so, and therefore the defenders are entitled to absolvitor.

Agents for Pursuers—Hope & Mackay, W.S.
Agents for Defenders—Gibson Craig, Dalziel, & Brodies, W.S.

Wednesday, March 20.

SECOND DIVISION.

SPECIAL CASE—EWING, ETC.

Liferent and Fee—Superior and Vassal—Casualty—Ground-Annual—Grassum.

Trustees under a trust-disposition and settlement conveyed certain lands in liferent to one person, and in fee to another. Parts of the lands had been feued out for a yearly stipulated sum, and a sum to be paid every twenty-fifth year in lieu of casualties. Other lands had been disposed under contracts of ground-annual, stipulating for a certain yearly payment, and a sum in name of grassum every twenty-fifth year. *Held* that the sums payable every twenty-fifth year, both under the feu-contracts and the contracts of ground-annual, belonged to the fiar.

The following Special Case was presented by Mrs Ewing and H. E. C. Ewing, Esq. of Strathleven:—

"The facts are as follows:—(1) The late James Ewing, Esq. of Strathleven, died on or about 29th November 1853, leaving a general trust-disposition and settlement, dated 9th September 1844, whereby he conveyed to trustees, for the purposes therein mentioned, the whole lands, estates, &c. (2) By the third purpose or direction of the said trust-disposition and settlement the testator directed and appointed his trustees to execute and deliver a regular and valid deed or deeds disposing and conveying his lands and estate of Levenside, &c., to the said Mrs Jane Tucker Crawford or Ewing, his spouse, in liferent, during all the days and years of her life, in the event of her surviving him, but so long as she continued his widow allanarly, and to and in favour of the heir-male of the body of the said James Ewing and his heirs and assignees whomsoever; whom failing, the heir-female of the body of the said James Ewing and her heirs and assignees whomsoever; whom failing, to the said Humphrey Ewing Crum Ewing, and the heir-male of his body, &c., in fee. (3) The said James Ewing left no heirs of his body. (4) After his death the trustees made up a feudal title to the said lands and estate of Levenside, now called Strathleven, and then, by disposition bearing date the 7th December 1854, they disposed and conveyed the same to Mrs Jane Tucker Crawford or Ewing 'in liferent during all the days and years of her life, but so long as she continued the widow of the said James Ewing allanarly.' Mrs Ewing was duly infeft on this disposition in September 1855. (5) Certain portions of the said estate which were held burgage had been disposed of by Mr Ewing and his predecessors for building purposes, the consideration being payment of ground-annuals. The contracts of ground-annual are in usual form. By them the property of the building lots is conveyed to be built upon under the real lien and burden of the payment of a yearly ground rent or ground-annual to be paid or uplifted and taken

furth of the subjects conveyed at one of the yearly terms, and a like sum in name of grassum is stipulated to be paid at the expiration of every twenty-fifth year from and after the term of entry, over and above the ground rent for the year, with interest and penalty. (6) Another portion of the said estate of Strathleven consists of the superiority of various feus. In the greater part of the feu-dispositions or contracts the casualties of superiority payable at the entry of heirs and singular successors are taxed at a duplicand of the feu-duty. But in some of the larger and more important feus, granted to linen printers or others, for the purpose of their business, the reddendo clause in the feu-contracts is differently expressed, the lands being holden for the yearly payment of a sum in name of feu-farm duty, and the vassals and their successors paying to the superior and his heirs and successors a sum (either the same, or less than the yearly feu-duty) on the expiry of every twenty-five years from the term of entry, and that in lieu of the casualties, legal or conventional, which might arise, due to the grantor and his forefords as superiors of the subjects. (7) The said Mrs Ewing, in virtue of the liferent conveyance in her favour, has drawn the ground-annuals and feu-duties payable under the contracts of ground-annual and feu-contracts, and she thinks that as liferentrix she is entitled to the sums payable as grassums under the contracts of ground-annual, and to the sums payable every twenty-five years under the feu-contracts. (8) The said Humphrey Ewing Crum Ewing is fiar of the said estate of Strathleven, and vested in the superiority thereof, and disputes the right of Mrs Ewing to such grassums and periodical payments, and maintains that they are payable to him."

The questions of law for the opinion and judgment of the Court are:—

"1. Whether, during the survivance of the liferentrix, the grassums becoming payable under the said contracts of ground-annual belong to her or to the fiar?"

"2. Whether, during the survivance of the liferentrix, the sums becoming payable periodically at intervals of twenty-five years under the said feu-contracts belong to her or to the fiar?"

N. C. CAMPBELL and WATSON for Mrs Ewing.
Solicitor-General (CLARK) and MARSHALL for Mr Ewing.

The Court held that both the sums payable every twenty-fifth year went to the fiar.

Agents for Mrs Ewing—M'Ewen & Carment W.S.

Agents for Mr Ewing—Tods, Murray, & Jamieson, W.S.

Wednesday, March 20.

TURNBULL v. WALLACE.

Poor Law Act, 8 and 9 Vict. c. 83, §§ 70, 71, and 72—Settlement.

A married man who has deserted his wife may acquire a residential settlement in a parish, although his wife is at the time receiving relief from another parish; and the parish in which the husband has acquired a residential settlement is liable to reimburse the parish relieving the wife.

James Wallace, Inspector of Poor of St Nicholas

parish, Aberdeen, sued William Turnbull, Inspector of Stewarton, Ayrshire, for certain sums paid to the wife of David Caird. The following interlocutor, pronounced by the Sheriff of Ayrshire (CAMPBELL), recalling the interlocutor of the Sheriff-Substitute, fully brings out the facts of the case:—"Finds that the present action is at the instance of the Inspector of Poor of the parish of St Nicholas or City Parish of Aberdeen, pursuer, against the Inspector of the parish of Stewarton, defender: Finds the summons concludes for payment of £10, 8s. 3d. outlay and expenses incurred by the pursuer in maintaining a pauper named Mary Davidson or Kerr from the 26th of January 1869 to the date of the summons, and for future aliment: Finds the said Mary Davidson or Kerr is the lawful wife of David Kerr, who was born in the pursuer's parish in the year 1810: Finds the said David Kerr, who was married in 1829, deserted his wife at Aberdeen in the year 1855, and has continued his desertion up to the present time: Finds that at the date of his desertion in 1855 the said David Kerr had a residential settlement in the parish of Old Machar, Aberdeen: Finds the said Mary Davidson or Kerr, shortly after her husband's desertion, applied to Old Machar for parochial relief: Finds the said parish of Old Machar granted her temporary relief for a few months prior to 14th January 1856, at which date she ceased to be chargeable, and apparently supported herself for nearly, but not quite, five years: Finds the said Mary Davidson or Kerr again fell into poverty, and became chargeable to the said parish of Old Machar on the 27th of October 1860, and received relief up to the 4th of February 1861, when she removed to the pursuer's parish: Finds that, in consequence of the said David Kerr's continuous absence from Old Machar since 1855, a statutory notice of chargeability was sent by that parish to the pursuer's parish upon the 27th of October 1860, on the ground that the said David Kerr had lost his residential settlement in Old Machar, and that the pursuer's parish was bound, as the admitted birth parish of the said David Kerr, to relieve Old Machar of the pauper's future maintenance: Finds the pursuer, in the belief that he was bound to relieve Old Machar from the date of the statutory notice in October 1860 until the pauper's removal to the pursuer's parish in February 1861, repaid Old Machar its advances during that period, amounting to £1, 8s.: Finds that, from the 4th of February 1861 up to the date of the summons, the said Mary Davidson or Kerr has received relief from the pursuer's parish, and is now in receipt thereof: Finds that the sums concluded for as aforesaid have been disbursed by the pursuer in alimending the said Mary Davidson or Kerr and in investigating her settlement, and that the pursuer continues to aliment her: Finds that, from the year 1863 to the present time, the said David Kerr has resided in the defender's parish, viz., the parish of Stewarton, and that it is not alleged that he has had recourse to common begging by himself or his family, or that he has ever received or applied for parochial relief: Finds that, on or about the 26th day of January 1869, the pursuer sent a statutory notice of the chargeability of the said Mary Davidson or Kerr to the defender, and intimated his claim of relief in terms of statute: And in these circumstances, finds, in point of law, that the said David Kerr acquired and still possesses a settlement in the defender's parish; that the settlement of the husband is also the settle-