

COURT OF SESSION.

Tuesday, October 17.

OUTER HOUSE.

[Lord Kinnear.

SIR J. R. GIBSON MAITLAND, PETITIONER.

Process—Expenses—Approval of Auditor's Report—Entail—Petition to Uplift and Apply Consigned Money—Lands Clauses Consolidation Act (8 Vict. cap. 19), secs. 71 and 79.

In this petition to uplift and apply money which had been consigned in bank by the respondents, the Caledonian Railway Company, in terms of the Lands Clauses Consolidation Act, sec. 71, as being the value of lands acquired by them for the purposes of their undertaking, the respondents, the Railway Company, were found liable in the petitioner's expenses, according to the ordinary practice under sec. 79 of the said Act. After taxation by the Auditor of Court they tendered payment of the taxed amount to the petitioner's agents, under deduction of the expense of approval of the Auditor's report and motion for decree in terms thereof, which had not been incurred. The petitioner's agents declined to accept the amount tendered unless they were paid in addition a fee of 6s. 8d. for trouble at settlement and for accepting payment without moving the approval of the Auditor's report. The petitioner now moved for approval of the Auditor's report and for decree for the taxed expenses. The respondents objected to decree going out for more than the amount tendered, on the authority of *Allan v. Allan's Trustees*, July 1, 1851, 13 D. 1270, and other cases not reported. It was maintained for the petitioner that an agent is entitled to the fee of 6s. 8d. referred to if he accept payment without obtaining approval by the Court of the Auditor's report, and that the rejection of the respondents' tender was therefore justifiable. The Lord Ordinary decided against the petitioner's contention, and pronounced the following interlocutor:—"The Lord Ordinary approves of the Auditor's report on the petitioner's account of expenses, and decerns for payment to him by the Caledonian Railway Company (respondents) of the sum of £24, 6s. 6d., being the amount of said expenses incurred and tendered by the respondents previous to the petitioner's enrolment for decree."

Counsel for Petitioner—Guthrie. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Respondents—Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Monday, October 30.

TEIND COURT.

(Before the Lord President, Lords Mure, Shand, Craighill, and M'Laren.)

AUGMENTATION—ST CUTHBERTS.

Teinds—Augmentation.

This was an application by the two ministers of the collegiate charge of the parish of St Cuthberts, Edinburgh, for an augmentation of stipend to the extent of 14½ chalders each. It was stated for the ministers that the stipend was last modified in February 1862 at 29½ chalders each, with £15 for communion elements, and that the yearly value to each minister of the glebe fund amounted to £230, making the total emoluments of the senior minister £670 with a manse, and the junior minister £720 without a manse; that the population of the civil parish according to the census of 1851, the basis of the last augmentation, was 82,479, and in 1881 was 166,603, while, exclusive of the population of thirteen *quoad sacra* parishes which had been disjoined, the ecclesiastical population, according to the census of 1871, was 85,471; that the real rental, which in 1862 was £382,000, had risen in 1881 to £1,067,442, and that there was free teind to the amount of about £1400; that the expensive calculations involved in localising the stipend, and the cost of collection from the feuars, together with the unusual number of bad debts, made this a special case. It was further stated that in the Barony and Cathedral parishes, Glasgow, the stipend was 34 chalders, with £30 for communion elements. The application was not opposed.

The Court, in respect of the circumstances of the case, granted an augmentation of 10½ chalders to each minister.

Counsel for the Ministers—Pearson—Dickson. Agent—H. W. Cornillon, S.S.C.

Tuesday, October 31.

SECOND DIVISION.

[Lord Fraser, Ordinary.

IRELAND v. NORTH BRITISH RAILWAY COY.

Process—Issue—Reparation—Form of Issue where more than One Ground of Fault alleged—Relevancy.

In an action against a railway company for reparation for the death of the pursuer's son, who was killed by one of the defenders' trains, where several grounds of fault were alleged—*held* that the defenders were not entitled to have an issue in which one of the alleged grounds of fault was specifically mentioned, but that the pursuer having stated a relevant case a general issue of fault was the proper issue for the trial of the action (*alt.* judgment of Lord Fraser, who held that one only of the grounds of fault alleged by pursuer was relevant, and that the issue to be granted should be confined to the question whether that fault was proved).