

case, leaving it to the Lord Ordinary, who is much better able than we are, to determine what the amount of those expenses should be.

LORDS DEAS, MURE, and SHAND concurred.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the reclaiming-note for Matthew Henry and others against Lord Kinnear’s interlocutor of 26th May 1883, Recall the interlocutor *in hoc statu*, and remit to the Lord Ordinary to receive the condescendences and claims tendered by the reclaimers on payment of all expenses hitherto incurred by the respondents, which will not be available at the future stages of the cause; But find no expenses due in respect of the discussion in the Inner House: And remit to the Auditor to tax the account of the said first-mentioned expenses, and to report to the Lord Ordinary, and remit to his Lordship to decern for said expenses when taxed.”

Counsel for Reclaimers and Claimants Matthew Henry and Others—M’Kechnie. Agents—Ronald & Ritchie, S.S.C.

Counsel for Reclaimers and Claimants Robert Anderson and Others—Jameson. Agents—Ronald & Ritchie, S.S.C.

Counsel for Respondents and Claimants Mr Anderson and Another—J. P. B. Robertson—Dickson. Agent—A. Morison, S.S.C.

Counsel for Respondent and Claimant the Curator *ad litem* to Bertha Mackenzie—Mackintosh—Graham Murray. Agents—Mackenzie & Black, W.S.

Tuesday, July 3.

SECOND DIVISION.

[Sheriff of the Lothians.]

SPALDING v. VALENTINE & COMPANY.

Process—Interdict—Mistomer in Small Debt Summons—Error in giving Christian Name, and Error in stating Christian Name of Defender.

A person carrying on business as “Mrs B. Spalding,” was cited before the Small Debt Court in an action in which she was designed as “Mrs Grace Spalding.” The summons was served upon her personally. She did not appear, and decree passed against her in absence. The pursuer, the debt not having been paid, executed a pouncing of goods in her premises. She then raised a process of interdict against the sale of her goods under the pouncing, her ground of action being that she had not been duly cited in the small debt action, and that the pouncing was therefore illegal. She did not deny that she was due the debt. The Sheriff-Substitute (HAMILTON) dismissed the action on the ground that it was excluded by the Small Debt Act, sec. 30. The Sheriff (DAVIDSON) adhered on appeal. She appealed to the Second Division. The Court, on the ground that there was no substance in the objection to the citation, and

that the debt was not denied, *affirmed* the judgment of the Sheriffs.

Counsel for Appellant—Salvesen. Agent—Alexander Clark, S.S.C.

Counsel for Respondents—Scott—Shaw. Agent—P. Morison, S.S.C.

Tuesday, July 3.

FIRST DIVISION.

PAGAN, PETITIONER.

Parent and Child—Custody—Patria potestas.

A father engaged in a profession which involved his residence in Africa, presented a petition in which he asked that his children, who were all in pupillarity, and resided in Scotland with their mother, should be removed from her custody and boarded and educated in the house of a person named by him. *Held* that the father was entitled as matter of right, without proof of disqualification of the mother, to regulate the place of residence and education of his children, and petition *granted* accordingly.

This was a petition by John Pagan, civil engineer, for the custody of his children. The petition set forth that he was married to Isabella Macgregor in September 1871, and that he was forty years of age, while his wife was thirty-eight. The surviving children of the marriage were three girls, aged respectively 10, 7, and 5, and one boy aged 4. At the date of the marriage, the petitioner, after filling several positions in England, went in 1879 to the Gold Coast as engineer and surveyor-general. The petitioner averred—“The petitioner has recently received information in regard to the respondent’s ill-treatment of her children, which makes it absolutely necessary, in the interests of the children, that they should be removed from their mother’s custody. The petitioner would himself have returned from Africa to make the needful arrangements, but the nature of his duties makes it impossible for him at present to obtain leave of absence.” The ill-treatment alleged was that the children were not properly clothed, that they were insufficiently fed and neglected, and treated with cruelty.

The petitioner further averred—“The petitioner has ascertained in addition that the respondent is systematically endeavouring to poison the minds of his children against him. She is training them up in the belief that the petitioner is a person of bad character, and she is trying to turn his children against him by making charges against him to them and in their presence which are utterly destitute of foundation. From her habits and the kind of company she is keeping she is not a suitable person to be entrusted with the custody of the children, either looking to their bodily wants or their moral and religious training.”

The petitioner detailed the arrangements he proposed to make for the board and education of the children.

Mrs Pagan lodged answers in which she denied the truth of the averments on which the pursuer sought to deprive her of the custody of the children.