Counsel for the respondent then submitted that she should not be found liable in expenses. She was working to support herself, but had no separate estate in the ordinary sense of the word. It was unusual to give the husband in such cases expenses against the wife.

Counsel for the petitioner stated that his information was that the respondent was working at photography and was not in destitute circumstances.

The Court, in respect that the custody of the child had been recovered by the petitioner, found it unnecessary to pronounce any further order, dismissed the petition, finding the petitioner entitled to expenses.

Counsel for the Petitioner—Macfarlane. Agents—Shiell & Smith.

Counsel for the Respondent—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Saturday, December 13.

FIRST DIVISION.

SMITH AND OTHERS *v.* SUTHERLAND AND ANOTHER.

Custody of Pupil where no Tutor or Guardian.

Both the parents of a child being dead, and the child being left without any legal guardian, a petition was presented by the child's whole surviving relatives, with the exception of one aunt, praying the Court to find the child's grandmother entitled to his custody. It appeared that when his parents died the child was boarded with some friends, whose care of their child had given the parents the most complete satisfaction; that the trustees under the father's will had continued that arrangement; and that it was improbable that the nearest male agnate would ever be able to undertake the office of tutor.

Held that there was no reason to interfere with the existing arrangement for the education and upbringing of the child, and petition *refused.*

The Rev. William Smith, minister of the Church of Scotland, died in India on 21st October 1889. His wife died about six months before him. There was one child of the marriage, John M'Gregor Smith, born in 1881. Mr Smith left a testament, in which he appointed certain trustees to carry out his last wishes, and to them he left his whole estate, both real and personal, "for the benefit of my son John M'Gregor Smith, now residing with Mr James Wilson, Dunfillan House, Crieff." He appointed the trustees his executors, and expressed a desire that they should pay his mother £100 from his estate, and directed that she and his brother Alexander should have the liferent of a little house property belonging to him in Catrine. The will contained no appointment of a tutor, and gave no directions as to the guardianship or custody of the testator's child.

When Mr Smith died his son John M'Gregor Smith was with Mr James Wilson at Crieff, and the accepting trustees under the will—the Rev. William Summers Sutherland and the Rev. James Muir Hamilton, both ministers of the Church of Scotland—continued to keep the boy where he was.

In November 1889 the present petition was presented by Mrs Catherine Smith, the boy's paternal grandmother, and others, his uncles and aunts, being, with the exception of one aunt who did not join in the petition, the whole surviving relatives.

They stated—"The petitioners are very desirous that the custody of the said John M'Gregor Smith should be entrusted to his grandmother, the petitioner Mrs Catherine M'Master or Smith. They believe it would be for his benefit to be placed under the guardianship of his grandmother. They further believe and aver that the estate is not sufficient to bear the expense of his board and education at Crieff. The available income, it is believed, amounts to about £40. They are satisfied that if he were living with his grandmother, and educated in Glasgow, the expense of his upbringing and education could be provided out of the income of the estate, and that such an arrangement would be in every way conducive to his interests and welfare."

The petitioners therefore prayed the Court to find the petitioner Mrs Catherine Smith entitled to the custody of the boy John M'Gregor Smith, and to ordain Mr Wilson to deliver him up to her.

The trustees, Mr Sutherland and Mr Hamilton, lodged answers, in which they stated that "John M'Gregor Smith formerly resided for about a year with the petitioner Catherine M'Master or Smith, who then lived at Eaglesham. His father, however, the testator, sometime before his death thought it better to remove him from her care, and to place him under the care of the said Mr James Wilson, Dunfillan House, Crieff. The testator frequently expressed to the respondents after he did so his great satisfaction with the result of this arrangement. Mr Wilson and his wife were on intimate terms with the testator, and also with Mrs Smith, the boy's mother, and he has cared for the boy's benefit in every way. The boy is receiving a good education at the Crieff Academy. The cost of his board and education is about £53 a-year, and the respondents estimate that the income of his means, together with an annual sum of £14 which he will enjoy from the Ministers Widows' Fund till he reaches eighteen years of age, will be about £60. . . . It is explained with reference to the petitioner Alexander Smith, who is the boy's next male agnate, and his heir-at-law, and for whom the testator made the liferent provision already mentioned, that he is unfortunately in very infirm health, and is unable to maintain himself or to be a proper guardian for the boy." They sub-

mitted that there were no grounds in fact or law upon which the Court should ordain the boy to be delivered up to Mrs Catherine Smith.

The respondents also produced letters from the Rev. William Smith to Mr and Mrs Wilson, from which it appeared that the boy had been placed with Mrs Wilson by his mother's desire, and that the father had been more than satisfied with her "motherly care of him."

At advising—

LORD PRESIDENT—The petitioner John M'Gregor Smith is nine years of age. His father died in October of last year, and his mother shortly before that. When his father and mother died the boy was boarded with Mr Wilson at Crieff, and was educated there, and we have evidence before us that their treatment of the boy gave high satisfaction to the boy's father and mother. The boy has no legal guardian of any kind. No tutor has been nominated by his father. His nearest male agnate has not come forward, and from some statements in the papers before us it does not appear probable that he ever will, nor that he is competent to undertake that office. We must therefore deal with the boy as entirely without a legal guardian.

The object of the petitioners is to have the custody and upbringing of the boy transferred from Mr Wilson to his grandmother in Glasgow. I do not see, however, that the grandmother, or all the boy's relatives put together, have any legal title to demand that this should be done, and therefore it is entirely a question for the discretion of the Court whether the existing arrangement should be superseded and another arrangement made for the custody and education of the child.

Now, looking to the feeling and opinion of the father and mother of the child, I certainly am not of the opinion that any cause has been shown for making the change proposed. On the contrary, I think it would be rash and inexpedient in the highest degree to interfere with the existing arrangement.

I think, therefore, that the petition should be refused, as it has no ground to stand on at all, and I am further very decidedly of opinion that not one penny of the expense of these proceedings can be allowed to be made a burden on the boy's estate, and the petition must accordingly be refused with expenses.

LORD ADAM—I also think that the petition should never have been presented. It is obvious that the care which Mrs Wilson took of the child was everything which the parents could desire. It is not said now that the child is not well and happy with Mrs Wilson. It is not said that the child will be better off with its grandmother, but rather that he will be no worse off, and that it is reasonable that the grandmother should have the benefit of boarding him.

In these circumstances I think there is no reason for interfering with the existing arrangement.

LORD M'LAREN and LORD KINNEAR concurred.

The Court refused the petition and found the petitioners liable in expenses.

Counsel for the Petitioners—J. A. Reid. Agents—Philip, Laing, & Company, S.S.C.

Counsel for the Respondents — Orr. Agents—Finlay & Wilson, S.S.C.

REGISTRATION APPEAL COURT.

Monday, December 1.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

NEILSON, APPELLANT.

Election Law — Household Qualification—Exemption from Poor Rates—Failure to Pay Poor Rates—Notice.

The claim of a person to be registered as a voter as inhabitant-occupier as tenant of a dwelling-house within a county was objected to on the ground that he had failed to pay poor rates. The rental of the premises was under £4, and it had been the invariable custom of the parish to assess the owner for the tenant's share of rates. In the year in question the owner was exempted by the parochial board. No notice of assessment was served on the tenant.

Held that the tenant was not exempted from payment of rates by the exemption of the owner; that he had not failed to pay poor rates that had become payable by him, as he had received no notice of assessment; and therefore that he was entitled to be put on the roll.

At a Registration Court for the parish of Cambusnethan, county of Lanark, the Sheriff-Substitute (MAIR) rejected the claim of William Neilson, labourer, to be entered on the roll as tenant of a house in Hill Street, Wishaw.

Neilson took a special case for the opinion of the Court of Appeal. The case set forth the following facts—"In the valuation roll of Cambusnethan parish for years 1888-9 and 1889-90 the said William Neilson is entered as tenant or occupier of the house No. 50 Hill Street, Wishaw, of which John Russell, labourer, is entered as the proprietor. The rent of said house is entered at £3, 10s. It has been the invariable custom in the parish of Cambusnethan (as in many other parishes in Scotland) to assess the owner of heritable subjects for his tenant's proportion or share of the parochial rates in cases where the rental is under £4. It is optional to the owner to recover such portion or share of rates from his tenant. In such cases no assessment notice is sent to the tenant, although an entry for the assessment leviable in respect of his tenancy or occupancy appears on the column