is similar to the right to any other heritable estate in Scotland, although the circumstance that mussels are so closely associated with the ground that it may correctly be said that they are parts of it, may have been one of the reasons which originally led to mussel scalps being regarded and treated as patrimonial property. The scalps are certainly, apart from the living mussels, *partes soli*, generally consisting of an aggregation of material, often of considerable thickness, and composed in no small measure of mussel shells and other remains of dead mussels. This close connection of mussels with the ground may, in their case, as in the case of oysters, have led to their being treated differently by custom, decision, and legislation from floating fish (other than salmon) in the sea or in tidal waters, the right to take which is now free to all.

With reference to the contention of the pursuer that even assuming that a Crown grantee is entitled to protect the mussels in a scalp of which he is proprietor from being taken by the public, no such right of protection exists where the scalp has not been made the subject of a grant, but remains vested in the Crown or its officers, I may say that if I be correct in thinking that the right to mussels is patrimonial while it is vested in the Crown as well as after it is alienated to a subject, there can be no ground for holding that the Crown is not entitled to protect its property from depredation just as a subject would be entitled to do. It would certainly be most unfortunate in the public interest if the Crown did not possess this right, as if it did not possess it mussels would ere long cease to exist upon its scalps. But if it were necessary that the Crown should have made a grant of the scalps in some form to a third party in order to let in this right of protection, it would, in my judgment, be sufficient that the grantee is a lessee of the Crown, or a sub-lessee under the Scotch Fishery Board, as Dr Fullarton is. I can see no reason for holding that a lessee, although his tenure is of a temporary nature, should not have the same right to protect the subject of his lease against depredation as a disponee would have to protect the subject of his permanent grant.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers — Guthrie, K.C. — Macmillan. Agent — James A. B. Horn, S.S.C.

Counsel for the Defender and Respondent — Solicitor-General (Dickson, K.C.) — Pitman. Agents—Davidson & Syme, W.S.

Tuesday, January 28.

SECOND DIVISION.

[Sheriff-Substitute at Selkirk.

ROXBURGH, BERWICK, AND SELKIRK DISTRICT BOARD OF LUNACY *v.* PARISH COUNCIL OF SELKIRK.

Lunatic — Pauper Lunatic — Liability for Maintenance — "Parish in and from which" Lunatic Sent — Poor — Lunacy (Scotland) Act 1857 (20 *and* 21 *Vict. cap.* 71), *sec.* 78.

The Lunacy (Scotland) Act 1857, section 78, provides that the expense of maintaining a pauper lunatic, whose settlement is unknown, in a district asylum, shall be defrayed by the parish "in and from which he was taken and sent."

A man who had been apprehended and convicted at Rothesay was reapprehended on his liberation from prison upon a number of other charges, and after being taken to various places for examination with respect to these, was ultimately committed to the prison at Edinburgh. The Crown authorities thereafter ordered that he should be tried at Selkirk by sheriff and jury on charges of fraud alleged to have been committed in the counties of Selkirk and Roxburgh.

At the pleading diet, held in Edinburgh, medical certificates were produced to the effect that he was insane, and the question of insanity was reserved to the second diet at Selkirk, when a plea of insanity in bar of trial was sustained, and the accused was ordered to be detained during Her Majesty's pleasure. He was thereafter removed to Perth General Prison, and subsequently, by order of the Secretary for Scotland, to a district asylum as a pauper lunatic.

In an action brought by the asylum authorities against the Parish Council of Selkirk for recovery of the expenses of the lunatic's maintenance, *held* that Selkirk was not the parish "in and from which he had been taken and sent" within the meaning of section 78 of the Lunacy (Scotland) Act 1857, and consequently that the defenders were not liable in relief to the pursuers.

Process — Appeal — Competency — Finality of Sheriff — Sheriff — Poor — Lunatic — Lunacy (Scotland) Act 1857, *sec.* 78.

Held that an appeal to the Court of Session against an interlocutor pronounced by a Sheriff-Substitute in an action under section 78 of the Lunacy (Scotland) Act 1857, brought by a district lunacy board against a parish, for recovery of the expense of maintaining a pauper lunatic, was competent, in respect that the finality clause of that section applied only to proceedings thereunder for relief by one parish

against another parish or party, and not to proceedings thereunder by a district lunacy board against a parish.

This was an action raised by the Roxburgh, Berwick, and Selkirk District Board of Lunacy, in the Sheriff Court at Selkirk, against the Parish Council of Selkirk for recovery of £32, 13s. 9d., in respect of the board and maintenance of George Dixon, a pauper lunatic, in the pursuers' asylum at Melrose from 25th January 1900 to 15th May 1901.

The following narrative of the facts is taken from the note appended to the interlocutor of the Sheriff-Substitute (SMITH):—"In February 1899 George Dixon was apprehended at Rothesay on a charge of breach of the peace committed there, was convicted, and sent to the prison of Greenock for five days. On his liberation he was immediately re-arrested upon a charge of fraud lodged against him in Rothesay. He was taken back there, examined, and recommitted to Greenock. Various other warrants being out against him from different parts of the country, he was taken from one place to another for examination and committed to various prisons. On 7th March he was brought from Glasgow to Selkirk for examination on a charge of fraud, and thereafter committed to the prison of Edinburgh. He was thereafter on a similar charge sent for examination to Jedburgh and recommitted to Edinburgh. The Crown authorities eventually resolved to have Dixon tried by sheriff and jury at Selkirk upon the charges against him for offences committed in the counties of Selkirk and Roxburgh. At the pleading diet in Edinburgh on 4th May two doctors' certificates, dated respectively 14th and 20th April, were produced, to the effect that at these dates Dixon was of unsound mind. The question of insanity was reserved for consideration at the next diet. At the trial at Selkirk on 15th May a plea of insanity in bar of trial was put forward and sustained, and the prisoner was ordered to be detained until Her Majesty's pleasure should be known. Dixon was thereafter committed to Perth General Prison, where he remained till 15th January 1900, when the Secretary for Scotland ordered him to be removed to the Roxburgh District Asylum. He was removed accordingly on 25th January. The asylum authorities now sue the Parish Council of Selkirk for Dixon's maintenance from 25th January 1900 to 15th May 1901. The pursuers allege that they have been unable to ascertain the parish of Dixon's settlement, and that the defenders are liable in respect that the parish of Selkirk was the parish in and from which Dixon was taken and sent to the asylum as provided for by section 78 of the Lunacy Act 1857."

The Lunacy (Scotland) Act 1857 (20 and 21 Vict. c. 71) enacts as follows:—Section 78—"If the parish of the settlement of any such pauper lunatic cannot be ascertained, and if the lunatic has no means of defraying the expense of his maintenance, nor any relations who can be made liable for the same, the expenses attending the taking and sending such lunatic and of his maintenance in the district asylum shall be defrayed by the parish in and from which he was taken and sent, but with recourse nevertheless to such parish at any time when it shall appear that such expenses are legally chargeable to any other party or parish against such party or parish, and who or which shall be liable also in interest and expenses, and the sheriff of the county in which the parish defraying such expenses in the first instance is situated shall certify under his hand the amount of such expenses, and such certificate shall be final and conclusive as to such amount, and shall not be subject to review by any process whatsoever under any proceeding instituted for recovery of the same, and the party entitled to recover such expenses shall proceed as accords of law against the party or the parish liable for the same by summary process before the sheriff of the county within which such party resides or in which such parish is situated, and the judgment of such sheriff shall be final: Provided always that the parish of settlement shall not in any case be liable in repayment of the expenses incurred in relation to any lunatic as aforesaid, unless written notice shall have been given by the parish or party disbursing the same to the parochial board of the parish of settlement, and shall then only be liable for the expenses incurred subsequent to such notice and for the year preceding."

The pursuers pleaded—"The defenders are liable as concluded for in respect that section 78 of the Act 20 and 21 Vict. cap. 71, applies, and that in the sense of that section the parish of Selkirk is the parish in and from which the lunatic was taken and sent."

The defenders pleaded—"(1) The pursuers' averments are irrelevant and insufficient to support the conclusions of the action. (2) The defenders' parish not being the parish in and from which the pauper was taken and sent to the pursuers' asylum, the defenders are not liable for his maintenance under the Act in question, and should be assoilzied with expenses."

On 29th July 1901 the Sheriff-Substitute pronounced an interlocutor whereby he sustained the first and second pleas-in-law for the defenders, and assoilzied them from the conclusions of the action.

Note.—[*After stating the facts ut supra*]—"The question as to what the parish is in and from which Dixon was taken and sent in the circumstances set forth here is one of considerable difficulty. I am only concerned here with the question of the liability of Selkirk, but I think it is unfortunate that that question must be decided in the absence of any of the other parishes which might possibly be held liable, and one or other of which apparently must be liable if Selkirk is not.

"Taking the case, however, as it is presented, I have come to the conclusion that whatever the parish of liability may be, it is not the parish of Selkirk.

"The section specifies the parish of lia-

bility as that in which the person was taken, and that from which he was sent to the asylum. No parish in the circumstances here set forth directly and literally satisfies both these requirements. Giving the exact and literal meaning to the words, Dixon was 'taken' in Rothesay and was 'sent' to Melrose from Perth. It would, however, be a legitimate argument that a parish which, in a reasonable though not strictly literal sense, satisfies both these requirements, is the parish contemplated by the statute. It might well be maintained that the parish in which literally the person was taken must be held constructively to be that from which he was sent, because, having once got the parish in which he was taken, any intermediate parish is merely to be regarded as incidentally passed through in the process of sending to the asylum. Or, conversely, it might be that having once got the parish from which the person was sent, that must be held constructively to be the parish in which he was taken. The pursuers here are trying to fix liability upon a parish which does not, in a literal sense, satisfy either of these requirements. Both expressions have to be applied constructively. Dixon was not apprehended in Selkirk, and it is not even averred that any crime on account of which he was apprehended was committed in that parish. On the other hand, he was not sent to Melrose from Selkirk, but from Perth. The pursuers rest their case upon the fact that Dixon, having been brought to Selkirk for trial, was there declared to be insane and unfit to be tried, and an order pronounced that he should be detained till Her Majesty's pleasure should be known. It is maintained that it was in virtue of the order then pronounced that Dixon had the stamp of lunacy impressed upon him, and was under that order sent to Melrose, all subsequent procedure being merely incidental to the execution of that order. The pursuers read the section as if it enacted that the parish of liability is that in which the person is found to be insane. It is very difficult to give that meaning to the words of the section, and it is a meaning which would lead to such extraordinary results that it is one which seems to me should be avoided if it is possible to find any other. It is to be noted that had the Crown authorities so desired, Dixon might equally well have been sent for trial before the High Court in Edinburgh, or the Circuit Court at Jedburgh. Had either of these courses been adopted, then it was admitted that the parish of liability would not have been Selkirk, but Edinburgh or Jedburgh, as the case might be. A principle of interpretation which makes the test of liability to depend upon the place of trial does not commend itself to my mind. The anomalous result of applying such a test would be very clear if the question arose in a less complicated and more usual state of facts. Suppose, for example, Dixon had resided for a year in the parish of Galashiels, and was there arrested upon a charge of crime committed within that parish, and taken to Selkirk for trial, and an interlocutor like that in this case pronounced, the result of applying the pursuers' theory would be that Selkirk rather than Galashiels would be the parish of liability. Such a result would be plainly contrary to the intention of the section. It is well to keep in view what the Sheriff's interlocutor here really was. It 'finds it sufficiently instructed that the panel George Dixon is in a state of insanity, and cannot be tried under the present indictment: Therefore on the motion of the procurator-fiscal, deserts the diet *pro loco et tempore:* Further, in terms of the provisions in the Act 20 and 21 Vict. cap. 71, section 87, orders the panel to be kept in strict custody until Her Majesty's pleasure be known; meantime ordains the panel to be carried to and detained in the prison of Edinburgh.' The Sheriff is dealing with a man who was not 'taken in' Selkirk, but was 'taken to' Selkirk, for the limited purpose of being tried for certain crimes alleged to have been committed within the sheriffdom. That purpose could not be carried out because he was proved to be insane, and the Sheriff merely ordered the continuance of his detention in the hands of the Crown authorities until a further order, with which the Sheriff had nothing to do, was pronounced. The Sheriff was not called upon to deal with the question as to when and where insanity commenced, and there is no reason for presuming that it commenced in Selkirk—the presumption is the other way. He does not in fact deal with the question of insanity at all, except as bearing upon the prisoner's temporary unfitness for trial. It was not on his order that Dixon was committed to Melrose. It may be said that the ultimate order followed upon the Sheriff's interlocutor, and was the result of it; but in the same sense the Sheriff's interlocutor was the result of previous procedure, and only one intermediate link in the chain which led up to the final order. It seems to me that the parish of liability must be either that from which Dixon was immediately sent to Melrose, or that in which he was first apprehended, and that there is no ground for selecting an intermediate parish like Selkirk, to which Dixon was only brought after his detention in the hands of the Crown authorities had begun, and from which he was taken before that detention came to an end.

"The only decision under the section to which I was referred was the case of *Gemmel* v. *Beattie*, 1861, 3 Poor Law Mag. 458. That decision is one to which great weight must be attached, though it is not actually binding; and the view there taken by the learned Sheriffs seems to me to lead necessarily to the conclusion at which I have arrived in this case."

The pursuers appealed to the Court of Session.

The defenders objected to the competency of the appeal, on the ground that the decision of the Sheriff in an action founded on section 78 of the Lunacy (Scotland) Act

1857 was declared to be final.

The pursuers maintained that the action did not fall within the finality clause of section 78, in respect that it was not based on a certificate granted by the Sheriff in terms of that section, nor was it an action by one parish against another.

LORD YOUNG—There is an objection taken to the competency of this appeal depending on the true construction and meaning of section 78 of the Lunacy (Scotland) Act of 1857. There is no doubt that the lunatic whose case gives rise to the present litigation was regularly—that is to say, legally—and in proper course sent to the asylum, the representatives of which are the pursuers of the present action, which is an action for payment of the expenses incurred by them in keeping and maintaining the lunatic in their asylum. They seek to be relieved of these expenses by the defenders, the Parish Council of Selkirk, on the ground that the parish of Selkirk was the parish in and from which the lunatic was "taken and sent" to their asylum, and if the parties had been agreed as to the parish of Selkirk being the parish in and from which the lunatic was taken and sent there could be no question that under section 78 of the Act the parish of Selkirk would be bound to relieve the pursuers of all proper charges incurred by them on account of the lunatic. But the parties are not agreed as to that, and accordingly the asylum authorities have brought this action against the parish of Selkirk as being the parish in and from which the lunatic was taken and sent. The parish of Selkirk denies that, and the Sheriff-Substitute has found that Selkirk was not the parish in and from which the lunatic was taken and sent, and accordingly he has assoilzied the defenders. It is an objection to the competency of an appeal against this judgment that we have now to determine.

The objection to the competency is founded on the words which follow those which I have just read from section 78 of the Act—"but with recourse, nevertheless, to such parish at any time when it shall appear that such expenses are legally chargeable to any other party or parish, against such party or parish, and who or which shall be liable also in interest and expenses"—that is to say, recourse may be had at any time by the parish in and from which the lunatic is taken and sent against any other party or parish who may be found to be liable for the lunatic. It may be years before they discover such other party or parish, but if they do discover another party, a relative it may be of the lunatic, and liable for his support, then they may have recourse against this relative, or if they discover that another parish is liable, then they may have recourse against that other parish. Then with regard to the procedure for making this right of recourse effectual, the statute goes on, "and the sheriff of the county in which the parish defraying such expenses in the first instance is situated shall certify under his hand the amount of such expenses, and such certificate shall be final and conclusive as to such amount, and shall not be subject to review by any process whatsoever under any proceeding instituted for recovery of the same, and the party entitled to recover such expenses shall proceed as accords of law against the party or parish liable for the same by summary process before the sheriff of the county within which such party resides or such parish is situated, and the judgment of such sheriff shall be final." It is on the meaning and effect of these last words that the objection depends. Now, in my opinion this provision of finality applies only to an action by the parish in and from which the lunatic has been taken and sent to be relieved of liability by some other party or parish, and that it does not apply to an action by the asylum authorities against a parish which they aver to be the parish in and from which the lunatic is taken and sent. Therefore the provision of finality does not apply to the present action, which is an action by asylum authorities against a parish, and not an action of relief by a parish against another party or parish. I am of opinion therefore that the objection to the competency of the appeal ought to be repelled.

LORD TRAYNER—I am of the same opinion. The clause of the statute does give rise to some difficulty of construction, and I am not surprised that the question of the competency of the appeal should have been raised, but on the best consideration that I have been able to give I reach the same conclusion as Lord Young. My view, in a single sentence, is this. The earlier part of the clause provides for the recovery of their expenses by the asylum authorities from the parish in and from which the lunatic was taken and sent. I think that as regards the asylum authorities the clause ends there, and that the remainder of the clause deals with the procedure to be followed in cases where the parish which has been found liable to the asylum authorities think they have recourse against another party or parish. The sheriff of the county in which the parish which has defrayed the expenses in the first instance is situated is to grant a certificate certifying the amount of such expenses, and such certificate is declared to be final and conclusive as to such amount. Then the party who has obtained the certificate is to proceed against the party or parish sought to be made liable before the sheriff of the county in which such party resides or such parish is situated, and the judgment of the sheriff is here again declared to be final; but there is in my opinion no provision of finality applicable to proceedings by the asylum authorities against a parish on the ground that it is the parish in and from which the lunatic is taken and sent. I therefore agree that this appeal is competent.

LORD MONCREIFF—I have had some difficulty, but I have come to the same conclusion as your Lordships. Section 78 of the Act is certainly ambiguous. The words

"and the judgment of such sheriff shall be final" might quite fairly be read as applying to the judgment of the sheriff in proceedings by the asylum authorities against a parish on the ground that it was the parish from which the lunatic was taken or sent, but I think the words apply more naturally only to proceedings by that parish for working out its recourse against another party or parish. I think that this construction becomes more apparent when we keep in view the concluding words of the section, which provide "that the parish of settlement shall not in any case be liable in repayment of the expenses incurred in relation to any lunatic as aforesaid, unless written notice shall have been given" to the parochial board. These words cannot apply to the case of an asylum, because an asylum is not bound to find out the parish liable. I think that gives colour to the whole latter part of the section, and shows that it deals only with procedure for enabling a parish which has been found liable to an asylum to obtain relief from another party or parish.

LORD JUSTICE-CLERK—I concur.

Counsel were then heard on the merits.

Argued for the pursuers and appellants —Selkirk was the parish "in and from which the lunatic was taken and sent." It was in Selkirk that he was pronounced to be insane, and therefore in the sense of the Act he was "taken" there. And having been "taken" in Selkirk, that was the place from which he was "sent." His removal subsequently to Edinburgh and Perth was merely part of his treatment as a lunatic.

Argued for the defenders and respondents—Whatever might be the parish of liability, clearly Selkirk was not. He was not apprehended in Selkirk, nor was it said that he had committed any crime in that parish. His only connection with Selkirk was that the Crown authorities sent him there for trial; but he might have been sent for that purpose to Edinburgh or Jedburgh. The result of the pursuers' argument was that liability would have been fixed upon any parish to which the Crown authorities had seen fit to send him, which was absurd.—*Heritors of Kilmorich*, July 10, 1839, 1 D. 1231.

At advising—

LORD JUSTICE-CLERK—The pauper lunatic for whose maintenance the parish of Selkirk is sued in this case is now in the asylum of Roxburgh, Berwick, and Selkirk Board of Lunacy. His presence there is the result of an order by the Secretary for Scotland, pronounced under the Criminal and Dangerous Lunatics Act of 1871, directing his removal to the pursuers' asylum from the prison of Perth. The question to be decided in this case is, whether Selkirk can be held to be the parish "in and from which he was taken and sent" in terms of section 78 of the Lunatics (Scotland) Act 1857. Now, the only connection which Selkirk ever had with the lunatic was that he having been apprehended for crime at Rothesay, and there being various charges against him in other places, he was committed to the prison of Edinburgh, and having been ordered to be tried in Selkirk, he was brought up before the Sheriff at Edinburgh for a pleading diet, where the plea was stated for him that he was insane, and it was supported by the certificate of two medical men. He was taken in custody to Selkirk for the second diet, the plea of insanity was sustained in bar of trial, and the Sheriff gave the usual order for his detention, which was followed up by an order by the Secretary for Scotland, under which he was confined in the general prison at Perth, which was afterwards followed by the order under which he was sent to the pursuers' asylum.

These being the circumstances, I am quite unable to see how it can be held that the parish of Selkirk can be liable upon the footing that the pauper was "taken in" or "sent from" the parish of Selkirk. I entirely concur in the opinion of the Sheriff-Substitute expressed in his note. It may in this case be very difficult to say where the pauper was taken and sent from so as to satisfy the words of the statute, but it certainly was not the parish of Selkirk. I am therefore in favour of refusing the appeal.

LORD MONCREIFF — I agree with the Sheriff-Substitute when he says in his well-expressed note—"I have come to the conclusion that whatever the parish of liability may be, it is not the parish of Selkirk." Under the 78th section of the Lunacy Act of 1857 Selkirk is only liable if it can be shown that in the sense of the Act it is the parish "in and from which he" (the pauper lunatic) "was taken and sent" to the pursuers' asylum.

Now, the lunatic was sent to the pursuers' asylum, not from Selkirk nor in virtue of an order by the Sheriff at Selkirk, but from Perth, by an order of the Secretary for Scotland dated 15th January 1900, made under section 4 of the Criminal and Dangerous Lunatics (Scotland) Amendment Act 1871, by which he ordered the lunatic to be removed from the general prison at Perth (where he had been for 8 months) to the Roxburgh District Asylum.

Selkirk's sole connection with the matter was this, that on 15th May 1899 the lunatic was by order of Crown counsel sent for trial at Selkirk on a charge of fraud. He had previously been confined in the prison of Edinburgh. On the same day he was brought before the Sheriff at Selkirk, and being found to be insane and unfit to plead, was ordered to be detained until Her Majesty's pleasure was known; and therefore was sent, not to the pursuers' asylum, but back to the prison of Edinburgh, and thence to the general prison at Perth. And it was only after he had been there for eight months, that, it being represented that his insanity was of a kind which could be properly treated in a lunatic asylum, he was removed to the District Asylum by order of the Secretary for Scotland.

It may also be pointed out that before the lunatic was sent to Selkirk for trial on 15th May 1899 he had been certified to be of unsound mind by Sir Henry Littlejohn and Mr Henry Hay, medical officer for the prison of Edinburgh, and therefore might at once have been committed to an asylum without being sent to Selkirk.

Therefore Selkirk's only connection with the lunatic was that he was sent to Selkirk for trial on 15th May 1899, found to be unfit for trial, and taken back on the same day to the prison of Edinburgh, whence he came.

Looking to the whole history of the case I cannot hold that the lunatic was taken in or sent from the parish of Selkirk to the pursuers' asylum. In my opinion the 78th section was intended to apply to the simple case of a lunatic, dangerous or otherwise, being found at large in the one parish, and taken thence direct to a district asylum in another.

LORD YOUNG and LORD TRAYNER concurred.

The Court dismissed the appeal, affirmed the interlocutor of the Sheriff-Substitute, and of new assoilzied the defenders.

Counsel for the Pursuers and Appellants —Rankine, K.C.—W. K. Dickson. Agent —Alex. O. Curle, W.S.

Counsel for the Defenders and Respondents—Dundas, K.C.—Constable. Agents —Constable & Johnstone, W.S.

COURT OF TEINDS.

Tuesday, March 4.

(Before the Lord President, Lord Adam, Lord M'Laren, and Lord Kinnear.)

MINISTER OF INVERKEILLOR *v.* THE HERITORS.

Teinds—Diversion of Teinds to Extraneous Parishes—Competent Stipend to Minister of Parish First Charge on Teinds of Parish—Right of Minister to Reclaim Diverted Teinds — Decimæ debentur parocho.

The Teind Commissioners in the years 1634-1636 made allocations of stipend to the ministers of certain extraneous parishes from the teinds of X parish, and the ministers of these parishes had continued to enjoy the stipend so allocated without interruption since the date of these allocations. In none of these extraneous parishes was any free teind available to make up the stipends to the amount enjoyed in virtue of the allocations from the teinds of X parish. On 17th November 1899 the Court of Teinds granted an augmentation of four chalders to the minister of X parish. The interim locality made up by the common agent showed that the free teind of X parish was inadequate to provide the augmentation granted by the Court of Teinds. The minister of X parish lodged objections to the interim scheme of locality, and maintained that he was entitled to reclaim from the ministers of the extraneous parishes such proportion of the teinds of X parish which had been allocated to the ministers of these parishes as was necessary to enable him to obtain payment of his full stipend as augmented by the Court of Teinds.

Held (1) that, as it did not appear that the minister of X parish was a party to any of the proceedings by which portions of the teinds of his parish were allocated to the ministers of the extraneous parishes, and as he had not, up to the date of the augmentation in November 1899, any interest or title to object to such allocations, the right of the minister of X parish to reclaim the teinds in question was not barred by prescription or acquiescence; (2) that on the principle that the teinds of a parish are at all times subject to the burden of providing a suitable stipend for the minister of the parish, the allocation of portions of the teinds of X parish to the ministers of extraneous parishes was necessarily subject to the claim of the minister of X parish to payment of a competent stipend from the teinds of his parish, and (3) that consequently the minister of X parish was entitled to have his stipend, as augmented, made up to him from those portions of the teinds of his parish paid to the ministers of the extraneous parishes.

The observations of Lord President Inglis in the *Bonhill* case—*Simpson* v. *Ewing*, December 8, 1882, 10 R. 313, 20 S.L.R. 235—are applicable only to payments made from lands, which having been originally part of the parish to which the payments were made, had been disjoined from that parish and annexed to another parish, and had no application to the case of payments made from lands, situated in another parish, which had never formed part of the parish to which the payments were made.

Process — Teinds — Reclaiming Diverted Teinds—Locality.

Procedure where in a process of augmentation, modification, and locality, the minister reclaimed teinds which had been diverted to extraneous parishes.

Expenses — Teinds — Reclaiming Diverted Teinds — Ministers of Extraneous Parishes Defending Benefices.

Where in a process of augmentation, modification, and locality the minister reclaimed teinds which had been for nearly 300 years diverted to extraneous parishes, and the ministers of the extraneous parishes, having appeared and been sisted as parties to defend their benefices, had reclaimed unsuccessfully against an adverse interlocutor pronounced by the Lord Ordinary, who