

In this interlocutor the pursuer acquiesced.

Counsel for the Pursuer—Solicitor-General and Marshall. Agent—William Kennedy, W.S.
Counsel for the Defender—Watson and Rutherford. Agent—William Milne, S.S.C.

Wednesday, February 28.

FIRST DIVISION.

JAMES LEITCH LANG v. JULIA DOWNIE
AND OTHERS.

Process—Multiplepoinding—Consignment.

Where an action of multiplepoinding of executry funds was raised in name of the executrix as holder, while the funds were actually in the hands of her agent, who had undertaken a certain obligation to the cautioner of the executrix and also to parties having a claim against the funds:

Held that, the actual holder having been sisted as a party to the action, it was competent to ordain him to make consignment in the hands of the Clerk of Court, reserving to him all claims of lieu which he might have in respect of his obligation or otherwise.

Counsel for the Appellant—Macdonald. Agents—D. Crawford & J. Y. Guthrie, S.S.C.

Counsel for the Respondents—R. Johnstone. Agent—J. B. McIntosh, S.S.C.

Saturday, February 24.

SECOND DIVISION.

LORD ADVOCATE v. JAMES DRYSDALE.

Teinds—Inhibition—Tacit Relocation—Bona Fide Perception.

A lease was granted by the Crown to certain proprietors, for themselves and in trust for the whole other vassals of the Lordship of Dunfermline, of the teinds and feu-duties of their lands, in consideration of a *cumulo* tack-duty of £100. This lease expired on 23d March 1780; but it was admittedly continued by tacit relocation till 1838. In May and June of that year the Crown raised and executed an inhibition of teinds, and also obtained decree in an action of removing, putting an end to the lease as at 23d March 1839, so far as it related to subjects other than teinds. Thereafter the beneficiaries under the lease paid the feu-duties due from their lands to the Crown; but no teind duties were paid or claimed till 1868.

In an action at the instance of the Crown as titular, against one of the vassals of the Lordship of Dunfermline, for payment of arrears of surplus teinds since the date of the inhibition, *held* that the defender had at least a colourable title, sufficient to sustain the plea of *bona fide* perception. *Opinion*, that the inhibition of 1838 was inept on account of its having been too late to affect the crop of the current year; that in any case it had been derelinquished, and that the lease had thus been continued, *quoad* teinds, by tacit relocation down to the date of the action.

In this action the Lord Advocate, on behalf of

the Crown, claimed various sums, amounting, exclusive of interest, to £1186, 3s. 0d., being arrears of the surplus teinds of the defender's lands of Easter and Wester Pitteuchar, due to the Crown as titular of the teinds of the Lordship of Dunfermline.

On 2d October 1783 a lease was granted by the Crown in favour of the Earl of Elgin and others, "for themselves and for behoof of the hail other vassals of the said Lordship of Dunfermline, and heritors of lands, the teinds of which, or feu-duties payable out of the same, belong to the said Lordship, and to the survivor or survivors of them and their assignees, and the heir or assignees of the last survivor," of "All and whole the fore-said Lordship of Dunfermline, and all lands, mills, woods, fishings, towms, burrows, annuairents, tenements, customs great and small, kirk's teinds, great and small, tenants' teandries, as well of burgh as of land, teinds, farms, duties, feu-farms, teind-duties, interests of price of teinds, profits, emoluments, casualties, and others whatsoever pertaining or annexed thereto, or to the patrimony thereof." The tack-duty was fixed at £100 sterling, payable at Whitsunday yearly, and the duration of the lease was to be for nineteen years from and after the 23d day of March 1780. After the expiration of this tack, in 1799, it was admittedly continued by tacit relocation till at least 1811; but the defender averred that it continued till 1838, and the case was argued in the Inner House on that assumption. On 20th and 27th May and 10 June 1838, an inhibition of teinds, at the instance of Her Majesty's Solicitor of Teinds, was executed against the Earl of Elgin (the sole survivor of the lessees named in the tack) and the other heritors and possessors of the lands out of which the teinds were due, "that they, nor none of them, presume nor take upon them, under any colour or pretext, to lead, intronit with, take away, or dispose upon any of the teinds of the foresaid lands, liable in payment of teinds to the said commissioners as having right in manner foresaid this instant crop and year 1838, without tack, license, or tolerance of the said commissioners first had and obtained thereto."

In order to put an end to the tack in so far as it included other subjects than teinds, the Commissioners of Her Majesty's Woods and Forests raised an action of removing in the Sheriff-court of Fife against the Earl of Elgin; and in this action a judgment was pronounced deciding in effect that an end was put to the tack as at 23d March 1839, so far as it related to subjects other than teinds.

In the year 1839 a correspondence took place between the Commissioners of Woods and Forests and the agents of Lord Elgin as to a settlement of arrears of tack-duty. The negotiations were conducted on the footing that the tack was at an end at Whitsunday 1839; and in 1851 the trustees of the Earl paid the whole arrears of tack-duty due at that term, with interest thereon till 1851.

Mr Drysdale, the defender in this action, was one of the vassals of the Lordship of Dunfermline, being proprietor of the lands of Easter and Wester Pitteuchar, the teinds and feu-duties of which were included in the lease above mentioned. Since Whitsunday 1839 the defender and his father had paid the feu-duties for their lands to the Crown; but they paid no proportion of tack or teind-duties for the period subsequent to 1839, either to the Earl of Elgin or to any other person as in right of the lease.