tor left his nephew Henry Gardiner (son of a deceased sister), an annuity of £25. By another codicil, dated in 1853, he *inter alia* directed his whole household furniture to be divided upon his wife's death—one half among *his relations, and the other half among the relations of his wife.* The testator died in 1859, and his wife in 1862. At the death of the testator Henry Gardiner was fifty years of age. Claims were made upon the estate of the testator (including the sum realised for the furniture) by the testator's two sisters, as his next of kin and heirs *in mobilibus*, by the relations of his wife, and by the reclaimer, H. Gardiner. The estate was not sufficient for payment of Gardiner's claims for annuity and the claims made on the furniture by the other claimants. In these circumstances Gardiner pleaded that he was entitled to the annuity, that the bequest of the furniture was void by reason of the uncertainty of the meaning of the word "relations," and that at all events—and if this were not so—he was entitled to be ranked with other relations upon the value of the furniture. The Lord Ordinary (Jerviswoode) held that the bequest of the furniture was not void from uncertainty; that Gardiner was entitled to be ranked thereon *pari passu* with the other relatives; but that he was not entitled to be ranked thereon in competition with the other relatives in so far as his claim was rested upon the annuity of £25 claimed by him. Against this judgment Gardiner reclaimed. The other relatives acquiesced in it. The case was argued before the Court upon 1st November, and also to-day at considerable length—chiefly upon the question whether the bequest was void or not. The Court made avizandum.

Tuesday, November 7.

THE HERITORS OF DUNBARNEY *v.* THE MINISTER.

Counsel for the Heritors—Mr Clark and Mr Hope. Agents—Messrs Hope & Mackay, W.S.

Counsel for the Minister—Mr Cook & Mr Gifford. Agent—Mr Cotton, S.S.C.

Upon 3d February 1864 the Court of Teinds modified the stipend of the kirk and parish of Dunbarney at eighteen chalders. A common agent having thereafter been elected and ordained to lodge a state of teinds, reported that there appeared to be no free teind in the parish out of which the augmentation could be provided. This report proceeded upon the fact of the existence of a decree of valuation bearing to be of the whole teind of the parish, dated 24th July 1635, which had been subsequently acted upon; and upon the terms of an interlocutor of the Court awarding an augmentation in 1813, modifying the stipend at a particular amount, being "the whole teinds, parsonage, and vicarage of the parish." To this report of the common agent the minister objected that the decree of valuation of 1635 was *ex facie* null, in respect it appeared from the extract produced to have been a decree of the High Commission, proceeding upon a "supplication" at the instance of the heritors, to which the minister had not been cited or been a party. The interlocutor of modification of 1813 did not involve a judgment on the validity of the old decree of valuation. The answers made by the heritors were that from the date of the valuation the minister did not require to be a party; that although the minister's name did not appear in the extract decree of valuation, that did not prove that he had not appeared, or at least that he had not been cited in the process. They also pleaded that the decree was valid, in respect it had been repeatedly acknowledged and approved of in subsequent proceedings in the Teind Court, to which several ministers in the parish had been parties, and in particular in the process in 1813, under which the minister had accepted the augmentation then granted, and received the stipend awarded.

LORD ORMIDALE sustained the objections for the minister to the report of the common agent, holding that the legal presumption from the terms of the extract decree was that the minister was not cited; and that the circumstance that this valuation had not been objected to by former incumbents could not be founded upon as homologation against the present minister. With regard to the decree of 1813, that could not be founded upon as *res judicata*, as in the process in which that was pronounced the parties had no occasion to join issue as to the validity of the decree of valuation.

Against this interlocutor the heritors reclaimed. Counsel having been heard the Court adhered.

The LORD JUSTICE-CLERK said—Had it not been for the date of the decree of valuation it could hardly have been maintained that a decree in a process of valuation to which the minister had not been cited could be good. But the first question is, Was the minister cited to this process? It is said that the extract decree does not prove that he was not. It appears to me that it gives as strong evidence as possible that he was not. The way in which the extract is framed is that it is made to contain a statement of the whole proceedings in the case. This process began by petition, in which it was stated that the titular and the heritors had come to an agreement upon the value of the teinds, and prayed the commission to ratify this agreement. We must assume that this was the whole of the prayer of the petition. Then there is just one deliverance by the Commission. There is no order for service of the petition, and no evidence that the minister was cited. The commissioners' decree conform to the agreement come to, of which evidence was produced to them. This decree is, of course, binding upon the parties to it. But the question is, whether it be binding upon the minister behind whose back the whole proceedings took place? There is a series of authorities which fix that the minister must be called. But it is said that this being a valuation under the commission appointed in 1633, it was not necessary to call the minister. The only authority for this is an alleged decision of the High Commission quoted by Connell. We have great reason for questioning the authority of this decision. In the first place, it is misprinted by Connell, and on referring to the MS. we find that it was a decision in a case between a minister of a parish and the heritors. It is not stated in what kind of process this was done, and the name of the parish is not, so far as I know, the name of any parish in Scotland. The MS. is one of which nobody can give any distinct account. I can't therefore recognise it as a judgment of the Commission of Teinds. But even if it were to be so regarded, the purpose of the decision cannot have been to lay down any general rule about not calling ministers to processes of valuation. It is not a decision on the general point, or intended to be so, therefore I think we must sustain the objection of the minister.

The other Judges concurred.

HIGH COURT OF JUSTICIARY.

Tuesday, Nov. 7.

The Lord Justice-Clerk and Lords Cowan and Neaves presiding.

BLUE AND WHITE *v.* LINTON.

This was a suspension at the instance of David Blue and John White of a sentence pronounced against them in the Edinburgh Police Court on 31st October last, convicting them of theft.

Mr R. V. CAMPBELL, for the suspenders, stated that they were respectable apprentices in town—the one to a plumber and the other to a bookbinder—that on 24th October last they found a box at the North British Railway Station, and on the 28th one of them was found attempting to sell one of the watches which the box contained.