also attached by their decree of poinding the ground.

The Lord Ordinary found "that, neither service of the actions of poinding the ground referred to by the respondents, nor the decrees obtained in said actions had the effect in law of interpelling the complainers from paying to the landlord the *rents* thereafter becoming due by them"; and, accordingly, repelled the respondents' Pleas in Law and sustained the reasons of suspension.

His Lordship added the following note to his interlocutor :—

"The only question now between the parties is as to the effect of the citations given or decrees obtained in the successive actions of poinding the ground at the instance of the late Mr Dixon and his son and heir, the present respondent. The respondents rely upon the decision in the case of *Lang* v. *Hislop*, 16 D. 908, as establishing that citation in an action of poinding the ground is such an intimation, to the extent of an assignation of rents contained in the deed under which the poinding is brought, as to interpel him from thereafter paying rent to his landlord. The Lord Ordinary thinks that decision does not affirm any such general proposition. On the contrary, it was, as he understands the judgment of the Court delivered by Lord Wood, rested upon the special terms in which the summons of poinding the ground was libelled in that case, in so far as it expressly set forth that the bond and disposition in security on which it proceeded contained an assignation to the rents, maills, and duties of the lands. In the present case, it appears from the extract decrees of poinding which are produced, that the summonses contained no such statement. In this respect they are in the ordinary style of a summons of poinding the ground, as given in the Juridical Styles. That such should be the style is quite consistent with principle, as poinding of the ground does not at all proceed upon the assignation to rents, which can only be given effect to by an action of maills and duties. Poinding the ground is competent to any party having a *debitum fundi*, whether he holds an assignation to the rents or not.

"Infeftment on the security completes the assignation of the rents, to the effect of securing the creditor's preference in a competition. But intimation to the tenant personally is necessary to interpel him from paying to his landlord. In reference to his right to the rents, the creditor, though infeft, is merely in the position of an assignee, who *quoad* the tenant has not interpelled him by intimation. To complete his right in this respect, he must give intimation, or do something which the law will hold to be equivalent. The Lord Ordinary does not think that he can be held to have done either, by merely serving a summons necessary for another and quite different purpose, and which does not mention the assignation, or imply that the pursuer has any such right. Poinding the ground is not, in any correct sense, the assertion of a claim to the rents, or a diligence to attach them. It is an attachment for payment of a *debitum fundi* of the moveables on the ground, whether belonging to the proprietor or to the tenant,—but limited, in the latter case, to the amount of the rent. The use of such a diligence does not necessarily import the creditor's intention to put in force his right to the rents if he has it, nor does it import that he has that right. On these grounds, the Lord Ordinary cannot sustain the general proposition contended for by the respondents in regard to the effect of citation in a poinding of the ground; and he thinks that the decision in *Lang* v. *Hislop* gives no support to that proposition, and does not apply to the present case.

"The respondents referred to a joint minute of admissions in a Sheriff-court process of multiplepoinding regarding previous rents, No. 49 of process, as containing a consent to hold the citations and decreet in the actions of poinding the ground as completed poindings. The Lord Ordinary should have doubted whether an admission given for the purposes of that process could have been imported into this case. But it does not appear that the tenants, the present complainers, who were raisers of the multiplepoinding, were parties to the minute, and, of course, no agreement among the claimants can affect their rights."

The respondents reclaimed.

SHAND and M'LEAN for them.

CLARK and GUTHRIE for suspenders.

At advising—

LORD PRESIDENT—The argument of the respondents seems to proceed on a failure to distinguish between the effect of a poinding of the ground, which is a warrant for diligence to attach the moveables on the ground, and a summons of maills and duties to attach the rents. The proceedings in the multiplepoinding, in which it was urged by the reclaimers (and respondents) that the suspenders, the real raisers of that process, had been certiorated of the assignation to the rents in the respondent's bond, are not pleaded in this record, and are entirely irrelevant.

LORD ARDMILLAN concurred.

LORD DEAS declined.

LORD CURRIEHILL absent.

Agents for Reclaimer—J. & R. D. Ross, S.S.C.

Agents for Suspenders—Dundas & Wilson, C.S.

Thursday, July 9.

BEAUMONT & OTHERS (BROOK'S TRUSTEES) *v.* GREAT NORTH OF SCOTLAND RAILWAY CO. AND OTHERS.

Railway Company—Shareholders—Dividends—Great North of Scotland Railway Consolidation Act 1859. Under an Act of Parliament, a railway company created certain four-and-a-half per cent. perference shares, the dividends on which were, by a special provision in the Act, to rank *pari passu* with the dividends on certain five per cent. preference shares which had been created previous to the Act. There was also a special clause to the effect that no part of the deficiency in any year of the full amount of the dividend on the four-and-a-half per cent. preference shares was to be made good out of the profits of any subsequent year. No similar express provision was made regarding a deficiency of dividend on the five per cent. preference shares. *Held* (1) that the *pari passu* ranking contemplated by the Act meant that the holders of the two classes of shares should receive dividends rateable and in proportion to the amount of their preferential dividends of five or four-and-a-half per cent. effeiring to the shares held by each of them respectively; and (2) that no deduction from the profits of the company in any year should be made on account of alleged deficiencies in any previous

year of the dividend on the five per cent. preference shares, until funds were first set aside for payment of the full dividend for such year on the four-and-a-half preference shares.

Railway Company—Dividends—Capital. A resolu- of a railway company authorising the directors, in lieu of cash payments, to pay dividends by allotments of capital stock then unissued in the hands of the company, *held* to be illegal and *ultra vires.*

The pursuers—the marriage-contract trustees of Mr and Mrs Brooke—were the holders of £12,000 four-and-a-half per cent. A. preference stock of the Great North of Scotland Railway Company, originally 1200 shares of £10 each, created under the Great North of Scotland Railway Consolidation Act 1859. The defenders, other than the said railway company, were large holders of original five per cent. preference shares or stock of the said company, which had been created prior to the said Consolidation Act, whereby the previous Acts of the said company were repealed. The two main questions raised in the case regarded the relative privileges of these two classes of preferential shares — the original five per cent. preference shares and the new four-and-a-half per cent. preference shares. These questions were—(1) What is the meaning and effect of the provision in section 22 of the company's Act of 1859, that the dividends attached to the new shares shall rank *pari passu* with the dividends on the original preference shares?—and (2) Seeing that the 23d section of the Act prohibits any deficiency that may arise in any year on the full amount of the dividends on the four-and-a-half per cent. preference shares from being made good out of the profits of any subsequent year, but makes no similar provision regarding the five per cent. preference shares, are the holders of the five per cent. preference shares entitled to have unpaid arrears of their preferable dividends paid out of the profits of subsequent years either in preference to or *pari passu* with the preferable dividends on the new preference shares?

With regard to the first question—the *pari passu* ranking—the pursuers sought in the summons to have it found and declared that the free annual profits of the company should be divided between the two sets of preference shares "*pari passu,* that is to say, shilling for shilling, till the amount received by the holders of each of the said two classes of preference shares or stock shall amount to £4, 10s. per cent. per annum." The defenders, on the other hand, maintained that the profits should be divided between the two classes *pari passu,*—that is, "*rateably,* in the proportion of ten to the holders of five per cent. preference shares or stock, and nine to the holders of the said four-and-a-half per cent. A. preference shares or stock." The conclusion in the summons relating to the second question mentioned above, was to the effect that holders of these two classes of preference shares are entitled to have the free annual profits of the company divided amongst them free from any deduction of arrears of dividend said to be due to holders of the five per cent. preference shares on account of deficiency of dividend in previous years. The summons further concluded to have it declared that certain resolutions of the company passed at meetings on 2d October 1866 and 3d October 1867 were illegal and *ultra vires,* inasmuch as they implied that profits should be divided, not according to the pursuers' interpretation of *pari passu,* but according to the interpretation of the defenders. Also, that resolutions passed at a meeting of the company on 17th April 1867 should be declared illegal and *ultra vires,* in so far as it was thereby resolved to issue deferred dividend warrants payable to the holders of the five per cent. preference stock out of profits available for future division. Further, that the resolution at the meeting of 3d October 1867, authorising the directors to pay dividends by allotments of capital stock belonging to the company should also be declared illegal and *ultra vires.* Finally, the pursuer sought to have the company interdicted from paying to the five per cent. preference shareholders either the above-mentioned deferred dividend warrants or any alleged arrears of dividends accumulated from previous years except out of the surplus profits of any year, and after first paying the full dividend on the four-and-a-half preference shares.

The Lord Ordinary (BARCAPLE) found for the pursuers on all the points except the first; having interpreted the *pari passu* ranking of the two classes of shares in the sense contended for by the defenders. The grounds of the decision his Lordship fully explained in the following note appended to his interlocutor:—

"1. It appears to the Lord Ordinary that the statute meant to confer a *pari passu* preference upon the two sets of shareholders, in the ordinary sense of that phrase. That is, that it was not intended in any way to affect the amount of the claims on which they were respectively to be ranked, but only to exclude priority or preference of ranking by either party, in competition with the other. If that is the true nature of the provision, it follows that the original shareholders who are entitled to a larger amount of preferential dividend on each share held by them, must be entitled to rank for that larger amount *pari passu* with the new shareholders ranking for their smaller amount of preferential dividend. This, which the Lord Ordinary thinks is the natural construction, appears to be supported by the terms in which the provision is expressed. If it had been enacted that the two classes of shareholders should rank *pari passu* with one another, there might have been a plausible argument that, to the extent of the new shareholders' claim to a four-and-a-half per cent. preferential dividend, it was intended to exclude all inequality between them and the original preference shareholders, as to amount as well as priority of claim. But the terms of the enactment, which is, not that the two classes of shareholders shall rank *pari passu,* but that the *dividends* attached to the new shares shall rank *pari passu* with the *dividends* on the preference shares, is unfavourable to the pursuers' contention, and seems to indicate that the claims which are to be so ranked are claims for the larger and smaller rates of preferential dividend to which the parties are respectively entitled.

"The Lord Ordinary thinks the question in regard to arrears of the preferential dividends on the original preference shares to be attended with greater difficulty. It is to be kept in view that any similar claim for arrears on the part of the holders of four-and-a-half preference shares is expressly excluded by the 23d section of the Company's Act, 1859.

"Reference was made to a course of decisions in the Court of Chancery of great authority—*Sturge* v. *Eastern Union Railway,* 7 De. G. M. & G. 158; *Crawford* v. *North-Eastern Railway,* 3 Kay and Johnston, 723; *Henry* v. *Great Northern Railway,*

1858, 27 L. J. Ch., 1; *Matthews* v. *Great Northern Railway*, 1859, 28 L. J. Ch., 375; *Corry* v. *Londonderry and Enniskillen Railway*, 1861, 30 L. J. Ch., 390. On the authority of these cases, it must be held to be settled in England that, when there is nothing in the Acts authorising a preferential dividend specially adverse to such a construction, the preference is good for arrears of dividend, as well as for the dividend itself, for the period which has elapsed since the last declaration of dividend. The Lord Ordinary concurs in the reasoning on which these decisions were arrived at; and, in any view, he would have held them to be conclusive authorities on such a question. If the right of the original preference shareholders in this case still stood upon the Company's Act of 1851, which authorised the creation of their preference shares, the Lord Ordinary would have greatly doubted whether the terms of the ninth section of that Act did not exclude the application of the general doctrine as established in the English cases. It seems to deal with the net revenue of the Company separately, as it arises from year to year, and to provide that in every year in which it shall be equal to a dividend of 5 per cent. or upwards on the whole shares, ordinary and preferential, they shall all participate equally. But however this may be, the Act of 1859, which authorises the issuing of the new preference 4½ per cent. shares, repeals the previous Act, and seems to put the privilege of the original 5 per cent. preference shares upon a new footing. It is declared by section 21st that they 'shall be entitled in perpetuity to a preferential dividend at the rate of £5 per centum per annum.' This is such a constitution of right to a preferable dividend as has been held to give a preferable right to payment of arrears of the dividend out of the profits of subsequent years; and the Lord Ordinary is not disposed to think that there is anything in the concluding part of the clause to exclude that construction. But it is not necessary to determine the point in the present case, where the question does not arise with ordinary shareholders alleging that the claim for arrears is excluded by the limited terms in which the preference is conferred. The holders of the new preference shares found upon the enactment, in section 22d of the Act, that the dividends attached to their shares shall rank *pari passu* with the dividends on the original preference shares. The Lord Ordinary is of opinion that this privilege, on the faith of which the shares were created, and the manifest intention of the Legislature in conferring it, would be so far defeated by allowing arrears of dividends to be ranked upon the free profits of a subsequent year, either to the exclusion of, or *pari passu* with, the preferable dividends on the new preference shares. It is obvious that on the first occasion on which the profits should not be sufficient to pay a dividend of 4½ per cent. on the new shares, and of 5 per cent. on the original preference shares, the shortcoming on the latter could not in any way compete with the preference conferred on the former. That is precisely what is excluded by the provision that the two classes of preferable dividends should rank *pari passu*. Accordingly, in the proceedings complained of, the free profits then for division were divided between the two sets of preferable shareholders, the amount not being sufficient to pay them 5 and 4½ per cent. respectively. Deferred dividend warrants were issued to the original preference holders for the shortcoming on their dividends; but it is not necessary at present to inquire whether that was a proper proceeding. The first question for consideration is whether the shortcoming caused by the *pari passu* ranking of the 4½ per cent. dividends can be brought forward on the next occasion of declaring a dividend, either to exclude or compete with the claim of the new shareholders for their 4½ per cent. preference dividends? The directors and the company have acted upon the view that the arrear is a preferable claim of such a kind that it is to be deducted before stating the balance of free profits on which the two sets of preference dividends are to be ranked. At the debate the defenders maintained, as an alternative view, that they were at least entitled to have the arrears ranked *pari passu* along with the 5 and 4½ per cent. dividends which have accrued since the last dividend was declared. The Lord Ordinary is of opinion that both these views are inconsistent with the provision for a *pari passu* ranking of the preferential dividends. He thinks it impossible to hold that, while the claim for the sums now constituting these arrears, when it first emerged, was clearly excluded, as in competition with the 4½ preferential dividends it can come into competition with them merely by assuming the title of a claim for arrears. It is just as prejudicial to the holders of the new preference shares to have the amount of that claim ranked either preferably or *pari passu* in 1867, as it would have been in 1866. The Lord Ordinary thinks that the effect of the *pari passu* ranking having been to exclude the claim, when it first emerged, for a portion of the 5 per cent. dividends, as in competition with the 4½ per cent. dividends, that claim cannot afterwards be brought forward in competition with the same dividends accruing at a subsequent time, so as practically to repone the holders of the original preference shares against the equal ranking required by the Statute. These arrears may, and the Lord Ordinary assumes that they do, exist as a good claim against the profits of the company, which may hereafter, in the event of surplus profits arising, be held to be preferable in competition with the ordinary shareholders and with the new preference shareholders, after they have received their 4½ per cent. dividends. But in the existing state of matters, the claim appears to be excluded by the *pari passu* preference conferred by the Statute upon the latter class of shareholders.

"At the meeting held on 17th April 1867, it was resolved to issue to the holders of the 5 per cent. stock deferred dividend warrants for the dividends of that half-year, at the rate of 5 per cent., while no dividends were declared or dividend warrants issued in favour of the holders of the 4½ per cent. stock. This was clearly an improper proceeding, as tending to defeat the *pari passu* right of the latter class of shareholders. The directors appear to have become aware of this, and they recommended a different course, which was adopted by the next meeting. But the Lord Ordinary thinks that the pursuers are entitled to have it declared that the resolution to issue these deferred warrants was illegal and *ultra vires*, and to interdict against their being paid except out of surplus profits, after payment of the preferential dividends. They do not insist in a similar conclusion in regard to the resolution at the meeting of 2d October 1866, to issue deferred warrants for the arrear which then arose on the 5 per cent. preference dividends, amounting to £1964, 17s., these warrants having been already paid.

"3. The last point in the case is as to the

alleged illegality of the resolution, passed at a meeting of 3d October 1867, authorising the directors, in lieu of cash payments, to pay the dividends then declared on the two classes of preference stock above mentioned by allotments of capital stock then unissued in the hands of the company. Reference on this point was made to the case of *Hoole* v. *Great Western Railway*, L. R., 3 Ch. Ap. 262. The cases are different, in so far as there was there a statutory provision that dividends should not be paid out of monies received for the shares. But on general principles, which were given effect to in that case, the Lord Ordinary is of opinion that the resolution was *ultra vires* of the company. It appears from the minute of the meeting, and the report of the directors on which it acted, that there were not funds presently available for payment of the dividend, although profits may have been actually made. The Lord Ordinary thinks that, in these circumstances, the company could not make use of their unissued shares to pay the dividend. They could not of course compel any shareholders to take stock, and the result of any, of them refusing to do so would be to give to some of the shareholders their dividends in stock, as an equivalent for payment, and to others only the prospect of payment when funds can be set free for that purpose. As was said by Rolt, L. J., in the case of *Hoole*, the option given to the shareholders to take shares 'is not a payment of the apportioned share of net profits.' Lord Cairns held, and the Lord Ordinary thinks his reasoning is equally applicable to the present case, that every shareholder has right to have the shares 'turned into money, and to have the money rateably divided among the shareholders,' and that, 'if saleable, they must be sold for the equal benefit of all,' and if not saleable, 'must be kept for the equal benefit of all.' For these reasons, the Lord Ordinary thinks that the pursuers are entitled to the declarator which they ask as to this matter. He does not think that they are barred by delay from insisting in this or any of the other conclusions of the action.

"The defenders, the Clydesdale Banking Company, maintain, that having sold their shares to Mr Peter White, and the transfer having been completed on the day on which the summons was executed against them, they have no interest in the subject-matter of the action, and that they ought therefore to be assoilzied, or have the action dismissed as against them. But it does not appear that they have parted with their right to the dividends in dispute, and they have accordingly appeared to defend the action. In these circumstances, it does not appear that any distinction can be taken between them and the other defenders.

"The action was made necessary by what the Lord Ordinary holds to have been the illegal acts of the company in favour of and supported by the other defenders. But as the pursuers have failed in their important contention as to the mode of ranking the preference dividends *pari passu* under the Statute, they are only found entitled to half of their expenses."

The pursuers acquiesced in the Lord Ordinary's finding with regard to the *pari passu* ranking.

The defenders reclaimed.

CLARK and BIRNIE for the Great North of Scotland Railway Company.

YOUNG and MACKENZIE for the Standard Life Assurance Company.

SOLICITOR-GENERAL and BLAIR for the City of Glasgow Assurance Company.

BALFOUR for the Clydesdale Bank.

GIFFORD and SHAND in reply.

At advising (by LORDS DEAS, ARDMILLAN, and KINLOCH, the LORD PRESIDENT having declined)—

LORD DEAS—The Statute of 1859 authorised the Great North of Scotland Railway Company to issue certain shares entitling the holders to a preferential dividend of 5 per cent. per annum, and to issue certain other shares entitling the holders to a preferential dividend of 4½ per cent. It was stated that the 5 per cents. existed previously, but it is not easy to see how that is of great materiality in the present question, as it is what was done by the Act of 1859, which regulates the rights of parties. Section 21 of that Act provides for the dividends on the 5 per cents., and section 22 provides for the dividend on the 4½ per cents., and declares "that the dividend so attached to the said new shares shall rank *pari passu* with the dividends on the preference shares." Section 23 provides that the new shares shall be entitled to a preferential dividend out of the profits of each year in priority to the ordinary shares, and declares that, if in any year ending the 1st August, there shall not be profits available for the payment of the full amount of such preferential dividend for that year, no part of the deficiency shall be made good out of the profits of any subsequent year, or out of any other funds of the company. The question which arises between these two classes of shareholders was put perhaps as strongly as it could have been put for the 5 per cent. shareholders by Mr Young, in this way—That there is nothing in the Act of 1859 to prevent them from carrying forward arrears, just as they would have done in a question with the ordinary shareholders, if the 4½ per cents. had never been created. That is, if the 4½ per cents. had not been excluded from arrears, they and the 5 per cents. would have ranked each for arrears as well as for the dividend of the year, and it was then contended that the clause limiting the right of the 4½ per cents. cannot interfere with a right belonging to the 5 per cents. But although that is very plausible, it is not convincing. The question is not whether certain parties might have ranked *pari passu* under other enactments, but what is the fair meaning of this Act; and when we look at it in that view, section 22 tells the other way, because the result would be that which is pointed at by the Lord Ordinary, that while the parties would rank *pari passu* for the first year, that ranking would be negatived in subsequent years by the arrears of the 5 per cents. The question is, Did the Legislature ever mean that?—and that, suppose the company is due the one set of shareholders £5, and the other £4, 10s., the one should rank for arrears and the other not? I do not think that is the meaning of *pari passu* ranking under these enactments, and that is what we have to do with. The consequences must be taken into account in considering what is the fair meaning of these enactments. In that view I entirely agree with the result at which the Lord Ordinary has arrived. The only other point is as to the giving off of the Formartine and Buchan stock, and on that point I entirely concur with the Lord Ordinary. Apart from decisions, it comes to this, that the dividends would be paid with the capital and not the profits of the company. If the company were first to sell the shares, and then give the price to the shareholders, that would be giving the capital; and what has been done comes to precisely the same result. Each shareholder who received an

allotment of that stock would receive a portion of the capital of the company which ought to be left to yield dividend. There may be a little difficulty as to the way in which the Lord Ordinary has dealt with the dividend warrants. The 5 per cents. may be entitled, as in a question with the ordinary shareholders, to get payment of these arrears, and it may be quite right to give them a voucher to enable them to claim them afterwards. The objection is not to the giving of the warrants, but to the terms in which they are expressed. If a qualification is inserted, that they are not to compete with the 4½ per cent. shareholders, I suppose that will be satisfactory.

Lord Ardmillan—I have scarcely anything to add. We are dealing with two sets of preference shareholders, we are not in a competition between preference and ordinary shareholders. The holders of 5 per cent. stock have a preference; so have the holders of 4½, and what the Statute has given is a *pari passu* ranking for dividends. The words of the 22d section are, not a *pari passu* ranking of debts or a *pari passu* ranking of creditors, but that the "dividend so attached to the said new shares shall rank *pari passu* with the dividend on the preference shares." Now, I think the dividends which the company distribute are the annual profits—there is to be an annual distribution between these two classes. To allow one of them to be dealt with as if holding a preferable debt over the other, or to claim a *pari passu* ranking for the year's dividend, *plus* arrears, would give a right to accumulate arrears year after year until the one class would swallow up the other. According to the ordinary understanding, a dividend is an annual payment, it is a distribution of a sum at a particular date, and what I think here is, that the dividends are to be divided annually *pari passu* between these two classes of shareholders. I do not think that would be the case if Mr Young's argument was sustained.

Lord Kinloch—I have arrived at the same result. As to the leading question, of what is the sound meaning of the 22d section, I think the sound meaning is, that the 5 per cents. and the 4½ per cents. are put on the same footing. I think what they are to rank for is the dividend for the year and not the arrears. It is quite true that the right of the 5 per cents. to arrears is not taken away, but what is meant by that is, that they are to have a preference with the ordinary shareholders. Anything else would be begging the question. On the second point, I think the case of *Hoole* is sound in principle, and ought to be adhered to.

Agent for Pursuers—James Webster, S.S.C.

Agents for Great North of Scotland Railway Company—Henry & Shiress, S.S.C.

Agent for Standard Life Assurance Company—A. J. Russel, C.S.

Agents for City of Glasgow Assurance Company—Hunter, Blair, & Cowan, W.S.

Agents for Clydesdale Bank—Ronald & Ritchie, S.S.C.

Wednesday, July 8.

LORD ADVOCATE *v.* KEITH'S TRUSTEES AND ARBUTHNOTT.

Teinds—Valuation—Act 1707, *c.* 9.—*Prescription—Acquiescence—Extract—Excerpt.* An extract valuation recorded under the authority of the Court in terms of 1707, c. 9, which was in the following terms:—"(2) At Edinburgh the third of Februar jajvic. and threttie-six yeirs. The landis called the five-pairt landis of B., pertaining to R.A., are worth and may pay auch scoire bolls beir for stock and teynd parsonage and viccarage; the landis of W.K., pertaining to the said R.A., six chalders victuall; the burrow ruids of the toune of I., fourtie bolls beir; the lands of C., fourtie merks; B., fourtie merks; W. of K. and D., twa chalders victual; the lands of S., K. of K., six chalders victual;" contained in a writing which concluded with these words—"This is the just extract of the valuatione of the foresaidis landis as is mentionat in the principall registers thereof, extracted by me, Mr Thomas Murray, advocat clerk-deput to my Lord Register, and keiper of the said registers. (*sic sub.*) Theo. Murray." *Held* (diss. the Lord President and Lord Ardmillan) to contain all the elements of a decree of valuation, and to have force as such.

This was a question arising in the locality of Kinneff and Catterline, between the Lord Advocate, on behalf of her Majesty and the Commissioners of Woods and Forests, on the one hand, and the trustees of the late Viscount Keith and the Viscount of Arbuthnott on the other. The respondents founded on the following document, which they alleged to be an extract decree of valuation of certain lands in the locality:—

(Titled on back) "Valuatione of my Lord Arbuthnot's Landis wtjn. mentioned" (all on face of same sheet of paper).

"(1.)—*At Edinburgh, the 25th of March jajvic & threttie-six.*

"The Baronies of Arbuthnot and Futties, lyand within the parochin of Arbuthnott, and landis within the parochins of Fordoune and Eglisgreig, perteining to my Lord Arbuthnot, are raitted and estimat to be worth yeirlie of constant rent in stock and personage teyndis particularlie as efter followis:—To witt, the maynes of Arbuthnot nyne chalders victuall, twa pairt meill and thrid pairt bier; the landis of Bamff fyve chalders victuall, twa pairt meill and thrid pairt beir; the landis of Kirktoune of Arbuthnott ane chalder fourtein bolls victuall, twa pairt meill and thrid pairt beir; the landis of Pittarles four chalders victuall, twa pairt meill and thrid pairt beir; the landis of Pitquhorthie and Thraipland thrie chalders aucht bolls victuall, twa pairt meill and thrid pairt beir; the landis of Meikle Futthes four hundreth merks; the landis of Cauldcoittis twa chalders twelf bolls victuall, twa pairt meill and thrid pairt beir; the landis of Elpetie twa chalders meill; the landis of Gratismyre twelf bolls meill; the landis of Brumhairishill ten bolls victuall, twa pairt meill thrid pairt beir; the landis of Brigend ten bolls victuall, twa pairt meill thrid pairt beir; the landis of Cowdoune four bolls twa firlotts meill; the landis of Mongoldrum twentie bolls victuall, twa pairt meill and thrid pairt beir; the landis of Cadnoskeyne four bolls twa firlotts; the landis of Lais nyne bolls victuall, twa pairt meill thrid pairt beir; the landis of Craighill ten bolls victuall, twa pairt meill and thrid pairt beir; the landis of Dunrabine nyne bollis victuall, twa pairt meill thrid pairt beir; the landis of Drumzochries twentie bolls victuall, twa pairt meill and thrid pairt beir; the landis of Peathill nyne bolls victuall, twa pairt meill and thrid pairt beir; and the landis of Auldcooks twentie bolls victuall, twa pairt meill and thrid pairt beir.