quoad omnia or *quoad sacra tantum.* The question now is, of which description was the annexation?

The presumption, I think, in every such case is in favour of annexation *quoad omnia.* For such I conceive the normal process of parochial dismemberment. A limitation of the effect of the annexation, and one attended with the practical result of giving the spiritual duty to one man, and leaving the teind to another, constitutes a special and exceptional case, which requires to be established by the party averring it to have taken place. This presumption holds more especially in regard to annexations made prior to the Union—or it may perhaps be more correctly said, prior to the commencement of last century; anterior to which date there is, to say the least, a scanty record of annexations *quoad sacra tantum.*

In the present case, I consider the alleged limitation not to have been established. On the contrary, it is proved that, almost immediately after the date of the annexation, these lands of Balbeadie were on all hands treated *quoad civilia* as in the parish of Ballingry, and so continued downwards. Instances of this are given in almost every particular involving civil relations. The circumstance seems conclusive of the question. For whatever might have been said had nothing of the kind appeared, or only facts involving spiritual concernments, the circumstance that in every sort of way the lands have been dealt with *quoad civilia* as in the parish of Ballingry can be explained on no other supposition than that of a proceeding going beyond an annexation *quoad sacra tantum*—in other words, an annexation *quoad omnia.*

There is nothing to be set against this evidence except the fact that stipend has continued to be paid from the teinds of these lands to the minister of the parish of Auchterderran, not merely to the extent paid at the date of the disjunction from that parish and the annexation to Ballingry, but to the larger amounts allocated in after processes of augmentation. But this unauthorised payment in Auchterderran cannot preclude the lawful claim of the minister of Ballingry now insisted in. The fact is one which has not seldom occurred in parochial history, posterior to a disjunction and annexation. It probably has arisen out of the circumstance that in most instances the stipend paid at the date of the disjunction continues payable to the minister of the original parish; and in process of time it is forgot that the whole stipend is not so payable. In the case of North Leith, as exhibited in the decision *Johnston* v. *Heritors of St Cuthberts,* Mor. 14,834, the teinds of Newhaven, after it was annexed to the parish of North Leith, paid stipend for about 170 years to the original minister of St Cuthberts. Yet this was found of no avail against the minister of North Leith seeking to have an annexation *quoad omnia* declared by the Court, and the teinds reclaimed to the benefice of North Leith. The result must be the same in the present case.

I am of opinion that the interlocutor of the Lord Ordinary should be affirmed.

The other Judges concurred.

Agents for Minister—W. H. & W. J. Sands, W.S.

Agents for Heritor—Tait & Crichton, W.S.

Friday, June 11.

SECOND DIVISION.

DUKE OF ABERCORN AND SIR. W. H. DICK. CUNYNGHAME *v.* REV. HENRY DUFF.

Church—Repairs—Presbytery—Onus. A presbytery having given decree for the expenses of repairing the church in the parish of Duddingston, which includes Portobello, against the heritors according to their valued rent, the Court, in a suspension, after repelling a plea of personal bar, sisted the process with a view to the respondent bringing the real rent heritors into the field by declarator or otherwise.

This was a suspension of a charge made by the clerk of the Presbytery of Edinburgh. The Presbytery gave decree for the expense of certain repairs executed upon the parish church of Duddingston in 1865, against the heritors according to their respective valued rents. The Presbytery clerk charged as collector, whereupon two of the valued rent heritors brought this suspension, on the ground that the assessment ought, in the circumstances of the parish, and having regard to the decisions in the *Peterhead* and *Mauchline* cases, to have been imposed according to the valued rent. Under his pleas on the merits, the respondent stated a plea of personal bar founded upon certain actings of the suspenders in the proceedings before the Presbytery. He also pleaded that the suspenders were bound to bring the real rent heritors into the field by a declarator, they having the substantial interest. After a proof of usage, the Lord Ordinary (MANOR) suspended the charge, finding no expenses due.

His Lordship added the following note:—

"*Note.*—The point at issue in this case is the liability of the complainers, the Duke of Abercorn and Sir William Hanmer Dick Cunynghame, for their proportional shares of the expenses of repairing the parish church of Duddingston, as decerned for by a minute or decree of the Presbytery of Edinburgh, dated 31st January 1866. By that decree, following upon previous decrees and deliverances under which the necessary repairs were ordered and executed, the Presbytery found that the expenses of repairing the church of the parish of Duddingston, including the sum of £36, 18s. as the expense of collecting and administering the same, amounts to £669, 18s. 9¾d.; found the heritors of the said parish liable for the said sums in proportion to the valued rents of their respective properties, approved of a scheme of division and allocation of the amount decerned for among the heritors of the parish, according to the valued rents of their respective properties, as prepared by the respondent (Mr Duff), the clerk of the Presbytery, appointed the respondent to collect from the heritors the sums so allocated upon each of them; and decerned and ordained the heritors to make payment of the sums so allocated upon each of them respectively, as follows, viz.:—

The Marquis of Abercorn, . .	£571	3	5
Sir William Hanmer Dick Cunynghame, ...	90	16	9
William Jamieson's heirs, . . .	3	12	8
Humphrey Graham, Esq., . . .	4	5	11½

Being the proportions effeiring to the valued rents of their respective properties in the said parish.

"A charge given upon this decree was immediately met by the present suspension, at the in-

stance of the complainers, the Duke of Abercorn and Sir William Dick Cunynghame, who maintain that in the peculiar circumstances of the parish of Duddingston the expenses of the repairs of the parish church are not a burden upon them and the other two heritors whose names appear in the cess books of the county, according to their valued rent, but are a burden upon the whole heritors of the parish, according to the real rents of their lands and heritages as ascertained in terms of the Valuation of Lands Act. With reference to the number of real-rent heritors in the parish, the complainers state that these have of late years been very largely increased by the rise of the populous burgh or town of Portobello, the whole of which, with a trifling exception, is locally situated within the parish of Duddingston, though the greater part of it was, in or about the year 1860, disjoined from Duddingston, and, along with a portion of the adjoining parish of South Leith, erected into the *quoad sacra* Parish of Portobello. The number of individual proprietors or feuars in the part of Portobello still remaining within the parent parish is not very clearly brought out either in the record or proof, but there is no doubt that it is a considerable number. For the purposes of the present question it is not necessary that it should be defined with perfect precision, and such averments as have been made on the subject in the 7th reason of suspension are admitted by the respondents to be correct. The complainers state that there is, on the whole, a large number of small heritors in the parish, of the class of feuars, while the only heritors whose names appear on the cess roll are the four among whom, as above mentioned, the Presbytery have allocated the expenses of repairing the church; and on these grounds they contend that the burden of the repairs ought to be laid on all the heritors of the parish in proportion to their real rent, according to the rule established in the cases of *Peterhead* and *Mauchline*.

"For the respondents, on the other hand, it is contended that the reasons of suspension should be repelled, and the expense of repairing the church laid exclusively upon the heritors of the valued rent, in respect that the area of the church was divided or allocated among those heritors according to their respective valuations, and that from time immemorial the burden of repairs has always been borne by them alone, and that they have kept the management of the church entirely in their own hands. Had it been clear as matter of fact that the area of the church was at some former time divided or allocated among the heritors in proportion to their respective valued rents, the assessments for keeping the fabric in repair would now have been leviable from them according to the same proportion, that being expressly provided for by the terms of the 33d section of the Valuation Act. But from the proof which has been led it appears that the area of the church, which is one of great antiquity, has never been so divided or allocated, or at least that no trace has been found in the records of the parish, or elsewhere, of any such division or allocation. At the present moment the only two heritors who have seats appropriated to them are the Duke of Abercorn and Sir William Dick Cunynghame,—the former of whom has a small loft, and the latter a front seat in one of the galleries, and there is no evidence whatever to show how these sittings were originally allotted to them. The other two heritors whose properties stand valued in the cess books have no seats assigned to them at all; and, with exception of the portions of the area possessed by the Abercorn and Prestonfield families, all the other seats, both in the galleries and body of the church, are let indiscriminately for rent to the parishioners and all comers. The letting of the seats has been managed by an officer of the Kirk-Session called the Kirk-Treasurer; and Mr David Scott, who has held that office for the last ten years, and whose father before him held it for upwards of fifty years, is very distinct in his evidence as to the practice which has prevailed. He states that till lately the Duke of Abercorn's tenants have paid rents for their seats like other people, and it was only in 1847 that they were relieved of that charge, in consideration of the large assessment imposed on them under the Poor Law Act.

"From this alone it is obvious that the church of Duddingston stands in a very anomalous and exceptional position, since the letting of seats in a country parish church, whether for the purpose of maintaining the fabric or for raising a revenue for parochial purposes generally, is altogether illegal, and cannot be supported by custom or usage, however long continued. But the proof discloses circumstances still more remarkable with respect to the manner in which the management of this church and parish has been conducted. It appears from the evidence of Mr Scott, and of Mr John Ord Mackenzie, Lord Abercorn's commissioner, as well as from the entries in the cash-books of the kirk-treasurer, and other documents produced, that not only the produce of the seat rents, or seat *maills* as they are called, but all sums derived from other sources of every description—including mortcloth dues, payments for burial stances in the churchyard, church-door collections prior to the passing of the Poor Law Act, and even fines for discipline—have been in use to be thrown into one common fund, and applied for support of the poor, for ordinary repairs on the church and manse, and various other parochial expenses. In the book kept by the kirk treasurer the whole sums so received by him were put to the credit of the account, and all expenditure of the kind above stated was placed on the debit side. From time to time, any balance which accumulated was paid over to Lord Abercorn's commissioner for behoof of him and the other valued rent heritors; by whom again, in their several proportions, it was expended for parochial purposes, as occasion required. During the management of the present commissioner on the Abercorn estates, which has subsisted for the last nineteen years, two such payments have been made to him by the kirk-treasurer, one of £106 in 1851, and another of £84 in 1861; and that sum of £84 stands now in the commissioner's books at the credit of the valued rent heritors. A further balance, the amount of which is not ascertained, but supposed to be from £30 to £40, remains in the hands of the kirk-treasurer.

"The Lord Ordinary is of opinion that all these conventional arrangements, though proved to have existed beyond the memory of man, can have no effect upon the present question, which must be decided by the law of the land, irrespective of any irregular and unwarranted custom, however long-continued and inveterate it may be. If it be the fact, which it seems safe to assume in absence of any evidence to the contrary, that the area of the church of Duddingston was never divided among the heritors according to their valued rent, the real rent, in the present circumstances of the

parish, seems to be the only rule which can be applied to the apportionment of the cost of the repairs which have now become necessary.

"The valued rent heritors, though successful in their contention, have not been found entitled to expenses, because they have all along been parties to the illegal system of management which has hitherto prevailed, and which alone has led to any difficulty in the decision of the case."

The respondent reclaimed.

GORDON, Q.C., and CHEYNE for him.

SOLICITOR-GENERAL and MACKENZIE in answer.

At advising—

LORD JUSTICE-CLERK—In this case the question on the merits is, whether the heritors of Duddingston, as they appear in the valued rent roll, are the parties truly liable in assessment for repairs of the parish church, executed under the direction of the Presbytery upon Duddingston church; but two points are raised of a preliminary nature by the Presbytery. The first is, the suspenders are barred from taking up the plea because the matter had been left with the Presbytery, by the express consent of the suspenders, to deal with the case on the footing of liability attaching to them, if they should choose so to deal with it; and the second, that the suspenders failed to bring the proceedings under review at a time when matters in reference to the execution of any contract were entire. The Presbytery further pleads that the Court should direct the heritors to bring a declarator to try the question of liability as between themselves and the other heritors.

As to the first point, the plea of the Presbytery is rested upon the earlier proceedings in the case; in which the agents of the leading heritors on the roll of valued-rent, the Duke of Abercorn and Sir W. Dick Cunnyghame, are said to have so acted as to bind their constituents to abide by the mode of assessment adopted by the Presbytery; and, in particular, they rely upon a letter by Mr Kermack of the 14th December 1864, which is said to be of the nature of an authorisation to the Presbytery to proceed in executing repairs, with an understanding or engagement that the suspenders would implement the decree.

The nature and effect of that letter must be judged of by the position in which the matter stood at its date.

Dr M'Farlane, the minister of the parish had on the 26th October 1864 presented an application to the Presbytery setting forth the disrepair of the parish church of Duddingston, and craving, after intimation from the pulpit and letters to heritors in usual form, that the Presbytery should visit the church, order repairs, and thereafter impose the assessment according to the valued rent, or other just proportion.

The Presbytery unanimously appointed a committee to visit and report; and the committee reported to a meeting on the 30th November. At the meeting of the committee, Mr Kermack, as agent for the Duke of Abercorn, attended, and his statements are embodied in the committee's report.

He first complains that the petition should have been presented without intimation; "That if this intimation had been made the necessity for the application would have been obviated, and all needful repairs would have been executed without the adoption of the present procedure," and then he made a proposal to the effect that, on the part of the Duke of Abercorn, he would undertake that the repairs would be executed.

Dr. M'Farlane makes an explanation as to the circumstances under which the petition was presented, and then the committee of Presbytery resolved to communicate Mr Kermack's crave to the Presbytery.

On Dr M'Farlane suggestion, the Presbytery "resolved to proceed," and they proceeded to swear in reporters, and to obtain a report on the condition of the church. Had the Presbytery come to a different conclusion and accepted of the proposal, it would have truly presented the case now pressed upon us by the Presbytery as the result of the procedure. I think that Mr Kermack would then have initiated a course of procedure by which, if followed out, the valued-rent heritors would have been bound. I say if followed out, because the proposal was made by him, as agent for the then Marquis of Abercorn, subject to the concurrence of the other *heritors*, by which I understand Sir Wm. Dick Cunynghame, Mr Graham, and Mr Jameson to have been meant.

But the Presbytery otherwise determined. They chose, no doubt according to their sense of their duty, to take their own course. The offer was rejected—and the heritors could not possibly be bound by a rejected proposal.

It appears that a meeting of the Committee of Presbytery was held on 23th November, when a specification of repairs was given in, and that Mr Kermack, for the Duke, and Mr Gillespie for Sir W. D. Cunynghame, attended. A proposal was made by Mr Kermack for authority to make immediate repairs; but this proposal was not entertained, except to the effect of its being reported to the Presbytery. It could not possibly bind Mr Kermack's constituents, for it also was rejected.

On the 28th December, the Presbytery met and dealt with the letter on which the plea is mainly rested.

I am unable to view this letter in any other light than as a declinature on the part of the parties for whom Mr Kermack acted to take any further charge or interference in the execution of the repairs, because the Presbytery had taken "the matter in their own hands."—proposals which, if acceded to, would in all probability have effected all that was desired without any litigation or question of any kind. As I read this letter the heritors intimated that they would leave the Presbytery to take their own course, leaving the repairs to be carried out by the Presbytery and the petitioner as they might think best. They were ready to have taken the repairs into their own hands; the Presbytery declined their proposal; it was most natural to say that the Presbytery should take their own course, and this is precisely what they did say.

On the 26th April 1865 the Presbytery took up the question. A letter was read as to the removal of a pillar in the church, and then, in absence of the heritors, and without any special intimation made of an intention to come to any resolution on the subject, they pronounced the decree which is now suspended, fixing the liability for the repairs on the heritors who had valued rent, and in proporrion to the amount of their valued-rent, and directed intimation to be given to the heritors.

Hitherto I can find no trace of any agreement on the part of the valued rent heritors by which, on the assumption that the legal liability was on the real rent, they were to take upon themselves that liability. Proposals involving such a state of matters had been submitted, but rejected; and

consequently, *if* not liable *ex lege*, they cannot be liable *ex pacto*.

The subsequent procedure is important, not only as throwing light on the question as it then stood, but as it affects subsequent procedure. The valued rent heritors, on having the proceedings communicated, applied for and obtained a hearing before the Presbytery, the object being to obtain a recall of that portion of the decree of the Prebytery now complained of. They were heard upon the very point of the legality of assessing them according to their valued rent. They communicated the result of opinions they had obtained, and, in a letter of the 27th November, embodied in a minute of the Committee of Presbytery of the 29th November, their agents distinctly said—"Acting on this opinion, we will be prepared to resist any attempt which may be made by the Presbytery to enforce the decree and compel payment."

The Committee of Presbytery, on the 25th October 1865, declined a proposal to take the opinion of neutral counsel and abide by it, so that the parties then distinctly took the position of antagonism which they have since consistently held.

It is said that the heritors should have brought the question under the consideration of the Court sooner, and have forfeited their right to suspend because the contracts were entered into by the Presbytery. I am ignorant of any law or practice by which this contention can be supported. The Presbytery had notice of the objection, and proceeded in the knowledge of it to enter into the contracts. If they wrongly assessed the suspenders for implement of contracts not lawfully affecting the suspenders, the Court must suspend a charge to enforce a supposed obligation in that view, given contrary to law.

The Presbytery contends that the suspending heritors should at any rate bring a declarator, calling into the field the parties whom they say are liable. The repairs they say were undoubtedly required. The suspenders, they maintain, as being on the roll of valued rent, are liable in the first instance, and must show the liability of others before they can themselves be relieved. They further urge, on grounds of expediency, that as they are undoubtedly holders of property having a real annual value, they are assessable to a considerable extent, and should clear up the extent of their burdens by a declarator.

I do not think that, because the name of a party appears in the roll as having a certain valued rent, he must be held to be *prima facie* liable, if the true rule of assessment is not valued but real rent. Indeed the entry in this roll only imports necessarily a superiority right, which, in the absence of a property right, would not involve liability for this burden. Where the assessment is according to the valued rent, it may be that the party called upon to contribute according to that rule must pay in the case of a *cumulo* valuation of his land, unless he can point to a party in the posssession of the *dominium utile*, and obtains a division of the valued rent, and is thus enabled to fix the amount on any feuar or disponee; but where real rent is the rule, the question of the amount of valued rent is immaterial. I do not see how we can throw upon the suspenders the necessity of calling other parties. Their defence is complete if they show that the basis of the actual assessment is wrong, and if the valued rent has been improperly assumed as the ground and measure of a responsibility truly resting in law on another basis.

But, while I am clear that the plea of personal obligation is bad, and that we cannot call upon the suspenders to raise a declarator, I think that we should, before proceeding to deal with the question on the merits, allow the Presbytery, if so advised, to institute such a proceeding; and, if so, to sist proceedings in the suspension in the meantime.

I should therefore propose that we find that the suspenders have failed to instruct any personal bar to the suspenders insisting in the suspension, and sist for a short period to enable the Presbytery, if so advised, to raise a declaratory action bringing all parties into the field.

LORD COWAN—There are some pleas which require to be disposed of before the important question on the merits under this record can be decided.

Your Lordship has sufficiently adverted to the grounds dwelt on in the recent discussion, under which it was contended that the suspenders personally were bound by special undertaking to bear the expense of these repairs. I quite concur in holding that there is no room for this contention.

My attention has been specially directed to what may be designated the preliminary pleas stated by the respondent in the record.

I. It is *first* maintained that the complainers were bound to call the other heritors of the parish as parties to the process, meaning, as must be understood, not the two other proprietors having valued rent, but the whole heritors whose names appear as owners of heritable subjects in the valuation roll. For this plea there is no real foundation. The decree of the Presbytery is directed against the suspenders and the other two proprietors whose names occur in the cess roll, and the charge under suspension is directed exclusively against them. In maintaining their right to be freed from that charge as erroneous and illegal, the suspenders do not require to call any parties whatever. It is sufficient for them to plead that the liability attempted to be fixed on them is unfounded.

2. The next plea stated in the record is, that the complainers were bound to have brought the resolution or decree of Presbytery under review of this Court while matters were still entire. This plea appears to me equally groundless. Almost immediately after being informed of the resolution of the Presbytery on 26th April 1865, the agents for the suspenders intimated to the respondent that they would insist on the assessment being imposed on the whole parties who stand rated in the valuation roll, and that the assessment could not legally be imposed on the heritors of properties entered in the cess books for valued rent. This was on the 9th of May. Upon this intimation, the Presbytery resolved to hear counsel, which they did on the 28th June 1865, when they resolved to have a special meeting on the 17th July to take into "consideration the whole matter." At that meeting it was resolved, on the recommendation of the committee, to advise with counsel, and on 25th October, having obtained an opinion of the then procurator of the church, it was resolved to defer taking any steps to carry out the decree until next ordinary meeting. Afterwards—the repairs having meanwhile been completed under contracts entered into by the Presbytery—they, on 27th December 1865, fixed the amount to be paid by the heritors, and ordained the clerk "to prepare

a scheme allocating the same upon the heritors in proportion to the valued rent of their respective properties." And on 31st July 1866 the Presbytery pronounced the decree under which the charge under suspension proceeds. It is dated 27th May 1868.

This narrative sufficiently demonstrates that there is no foundation for the plea under consideration. When the remonstrance was addressed to them by the suspenders' agent on 9th May 1865, everything was entire so far as the principle of assessment were concerned. And it was not until 20th June 1865 that arrangements for the execution of the work were completed between the contractors and the Presbytery. Farther, as regards the resolution or decree of 26th April preceding, the Presbytery had agreed in May to reconsider the matter. This they did accordingly, and then only finally resolved to proceed, notwithstanding the express intimation contained in the letters from the agents of the heritors in May and June, that the principle on which the Presbytery were proceeding in reference to the assessment was in their opinion unwarranted and illegal. In this state of the facts, the proceedings taken by the Presbytery in the matter must be regarded as taken at their own risk and responsibility. They were fully warned of the alleged illegality as regards the principle of assessment while matters were entire; and the suspenders were not called upon in the circumstances to take any judicial measures for their protection until they received the charge now under suspension.

3. The other pleas urged by the respondent to elide the consideration of the question on the merits, are sufficiently noticed by the Lord Ordinary in the note to his interlocutor. There is no evidence to shew that this church, which is a very old fabric, was ever divided amongst the heritors of the parish according to their valued rent; and it is not and has not been in the memory of man occupied by the parishioners on that footing. And, as regards the custom which has prevailed of the kirk treasurer accounting for seat rents and funds derived from other sources, to the valued rent heritors, by whom the repairs of the church and other expenditure for parochial purposes have been borne and defrayed,—this can have no effect in imposing upon those heritors in all time coming the burden of building a new church, or of repairing the old one,—if, according to established legal principle, no such exclusive burden can be imposed on them. I adopt the views of the Lord Ordinary as in all respects correct.

Irrespective of these pleas, therefore, the question on the merits disposed of by the Lord Ordinary's interlocutor must either now or hereafter be taken into consideration and decided. The course which your Lordship proposes is, I think, the proper course in the circumstances.

The other Judges concurred.

Agents for Suspenders—Mackenzie & Kermack, W.S.

Agent for Respondent—W. Mitchell, S.S.C.

Saturday, June 12.

LAIDLAWS *v.* ROBERTSON.

Decree-Arbitral—Valuation of Stock—Excess of Powers—Reduction. Circumstances in which reduction of a decree-arbitral was refused and decree granted for the sum contained in it.

This was an action brought by Messrs David & Robert Laidlaw, engineers and ironfounders in Glasgow, for the purpose of setting aside a certain decreet-arbitral by which the stock-in-trade, plant, &c., of the "Patent Frictional Gearing Company, Glasgow," was valued on the occasion of the dissolution of the company, and by which the rights of the pursuers and defenders, who were the partners of the company, were ascertained.

There were a variety of grounds of reduction stated, but those mainly insisted in were:—(1) That a certain list of patterns, according to which the valuators proceeded, included patterns which did not belong to the company, but to the pursuers as individuals; and (2) That the valuators had not even confined themselves to the list in question, but had made a personal inspection independent of the list, and valued the patterns, &c., in the slump, with the result of including a number of things which were not intended to be valued at all. The pursuers alleged that the proceedings had been vitiated from the outset by these particulars, and that they (the pursuers) were refused an opportunity of establishing afterwards that the mistakes in question had been made.

The Lord Ordinary (ORMIDALE), after a proof, assoilzied the defenders, holding that, so far as the grounds of reduction alleged were relevant at all, they had not been supported by the evidence.

His Lordship added the following note:—

"*Note.*—It was conceded on the part of the Messrs Laidlaw that if they failed in their action of reduction the decree which has now been pronounced in the ordinary or petitory action followed as a necessary consequence; everything therefore turns on the validity of the decree-arbitral, and relative proceedings which the Messrs Laidlaw conclude for reduction of, in respect that Mr Kerr, the arbiter, gave effect to the valuation of Messrs More and Norman notwithstanding of its being subject to the objections—1*st*, that it was greatly in excess of what it ought to have been; 2*d*, that it included articles which never existed; and 3*d*, that it included articles not the property of the Patent Frictional Gearing Company, but of the Messrs Laidlaw alone. These objections to the valuation, it was maintained by the Messrs Laidlaw, they had offered to establish by proof, but were refused any opportunity of doing so by Messrs More and Norman, and by Mr Kerr. It was therefore argued that the valuation, decree-arbitral, and other relative proceedings referred to in the summons of reduction were reducible, on the ground that these shewed such a failure of duty on the part of the valuators and arbiter as amounted to legal corruption.

"The Lord Ordinary has been unable to see any sufficient reason for giving effect to this contention on the part of the Messrs Laidlaw.

"1. It is manifest beyond all doubt that Messrs More and Norman were selected to make the valuation in question as persons of skill and experience in such matters, and the parties expressly agreed that their valuation should 'be final and binding.' It would therefore require, in the Lord Ordinary's opinion, something different from, and much stronger than, anything proved in this case to reduce the decree-arbitral on the ground of the valuation being an excessive one. It is said that the valuation greatly exceeded that at which the parties had themselves estimated the worth of their property at their annual stock-taking during the subsistence of the copartnery; and further, that