	Brought forward,			£1300	16	7¼
locality of 1830 up to 1851 inclusive, .	£58	3	8			
Interest on annual payments composing said sum, from 5th April 1830 to 5th April 1860, .	53	2	3			
				111	5	11
With interest at 5 per cent. on the principal sums in 1, 2, and 3, from 5th April 1860 till payment.						
4. Vicarage teind paid to minister of Cameron, . .	£6	7	6			
Interest on annual payments composing said sum, from 5th April 1831 to 5th April 1851, .		9	2			
				9	16	8
With interest at 5 per cent. on £6, 7s. 6d., from 5th April 1851 till payment.						
5. Proportion of Teind-clerk's account, . . .				153	13	9
With interest at 5 per cent., from 16th May 1866 till payment.						
				£1575	12	11¼

The defences for the Crown were numerous. *Inter alia*, the following pleas were stated:—"(4) It is only against the under-paying heritors, and not against the Crown as titular, that the pursuer has any claim for repayment. (7) The pursuer's claim for repetition of any of the over-payments of stipend, and other payments condescended on by him, is prescribed in so far as regard payments beyond forty years."

While the case was before the Lord Ordinary the following minute was put in for the pursuer:—

"LEE, for the pursuer, stated that, without prejudice to the pursuer's pleas, and the pursuer being still uninformed what teinds are alleged not to have been received by the Crown, he was willing, before farther procedure, to sue the principal under-paying heritors for the proportion of over-payments due to the pursuer, and effeiring to the lands belonging to such heritors; and in case the said heritors should successfully establish in defence that they have paid their surplus teinds to the Crown, he craved that the present process might be sisted *in hoc statu*, to afford the pursuer an opportunity of proceeding against the under-paying heritors or their representatives."

The Lord Ordinary, on 13th June 1871, of consent, sisted process *in hoc statu*, in terms of the foresaid minute.

On 30th November 1871 the pursuer raised an action against the United College of St Andrews, and St Mary's College, St Andrews, who were said to be the principal under-paying heritors in the parish, concluding against them respectively for £271, 9s. 0¾d. and £31, 13s. 6¼d., in respect of over-payments of stipend by Mr Cheape and his trustees, with interest from 5th April 1865; and for £12, 9s. 4d. and £1, 9s., as their respective shares of the Teind-clerk's account, with interest from 16th May 1866.

On 21st June 1872 the Lord Ordinary conjoined the latter action with the former; and before answer, and under reservation of the pleas of parties, allowed the parties a proof of their averments, to be taken before himself.

The Lord Advocate reclaimed.

SOLICITOR-GENERAL and IVORY, for him, maintained that the action against the Lord Advocate should be dismissed, the under-paying heritors being the parties liable to the pursuer.

MILLAR, Q.C., and LEE, for the pursuer.

BALFOUR, for the Colleges, stated that he supported the interlocutor of the Lord Ordinary.

At advising—

LORD PRESIDENT—The first plea for the defenders is, that the pursuer's right of action is against the under-paying heritors, and not against the Crown as titular. I am not prepared to affirm this general doctrine. Until the circumstances have been investigated and ascertained, I am not prepared to dispose of the plea. If, as is alleged, the whole teinds of the parish, other than those paid to the minister as stipend, have been paid to the Crown or its tacksman, the action will be against the Crown, and that on the simple principle that the teinds which ought to have borne the burden of the stipend have come into the hands of the Crown.

The plea of prescription is very much in the same position. Before disposing of it we must know the state of the facts.

The other Judges concurred.

The Court pronounced the following interlocutor:—

Edinburgh, 10th July 1872.—"Allow the record to be amended, as now proposed by the pursuer at the bar; adhere to the said interlocutor, except in so far as the Lord Ordinary allows the parties a proof, and appoints the same to be led before his Lordship: In place thereof, remit to Roger Montgomerie, Esq., advocate, to inquire into the matters in issue between the parties in the conjoined actions, and to report, with power to him, if necessary, to take evidence; and grant diligence against witnesses and havers, and appoint the said Roger Montgomerie to be Commissioner to take the depositions of witnesses and havers, and receive their exhibits: Find the defender (reclaimer) liable in expenses since the date of the interlocutor reclaimed against, and remit," &c.

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

Agent for Lord Advocate—Donald Beith, W.S., Solicitor H. M. Woods, &c.

Agents for United College and College of St Mary's, St Andrews—W. & J. Cook, W.S.

Tuesday, July 9.

THE BELFAST AND ULSTER BREWING COMPANY (LIMITED) *v.* WILLIAM TRIMBLE.

Partnership—Joint-Stock Company—Articles of Association.

The articles of association of a joint-stock company provided—"The directors may commence the business of the company as soon as they see fit, notwithstanding the whole of the capital may not be subscribed for or taken."

Held that a formal resolution to commence business was not necessary to enable the directors to commence business, and make calls to carry it on, they having *de facto* commenced business.

This was an appeal from the Sheriff-court of Lanarkshire, at Glasgow.

The Belfast and Ulster Brewing Company, Limited, incorporated under the Companies Act, 1862, sued William Trimble, yarn-agent, Glasgow, for certain sums, amounting to £180, being the amount of calls due by the defender, as the holder of twenty shares in the pursuers' company.

The defender admitted that he had applied for twenty shares, and subscribed the memorandum and articles of association, but he alleged that he was induced to do so by the fraudulent representations of the secretary to the company, and that the whole scheme was falsely and fraudulently concocted to provide salaries for the secretary and manager. He also maintained certain more technical objections to the validity of the claims made against him, which sufficiently appear from the opinion of the Lord President.

The Sheriff-Substitute (ERSKINE MURRAY), on 3d February 1870, pronounced an interlocutor, in which he found that the defender, having signed the memorandum and articles of association, became, on the registration of the company, as incorporated, a shareholder therein, and therefore liable in payment of all calls properly made on him, and remains such until he shall succeed in obtaining the deletion of his name from the register of shareholders, or the reduction of the documents signed by him, as granted by him on fraud and misrepresentation; but that it falls on the pursuers to prove, as under article 15 of the articles of association, that the name of the defender is still on the register of members of the company as a holder of the number of shares in relation to which these proceedings are taken, and that notices of the respective calls were given in pursuance of the articles of association.

Article 15 provides—"In any proceeding by the company against a shareholder in respect of a call, it shall be sufficient for the company to prove that the name of the person proceeded against is on the register of members of the company, as a holder of the number of shares in relation to which the proceeding is taken, and that notice of such call was given in pursuance of these articles; and proof of the said matters shall be conclusive evidence of the debt, and it shall not be necessary to prove the appointment of the directors who made the call, or that a quorum of directors was present at the meeting of the board at which the call was made, or that the board was duly convened or constituted, or any other matter whatsoever."

After various procedure, the Sheriff-Substitute, on 1st July 1871, found that the pursuers had proved all that was necessary to fix liability on the defender, and decerned against the defender, in terms of the conclusions of the summons. To this interlocutor the Sheriff (GLASSFORD BELL) adhered on 17th February 1872.

The defender appealed.

SCOTT and LANCASTER for him.

SOLICITOR-GENERAL and ASHER, for the pursuers, were not called upon.

At advising—

LORD PRESIDENT—The defender is like many other defenders, sued for payment of calls, anxious to avail himself of every possible objection to the proceedings of the directors. But I cannot say that he has been successful.

The third plea is the one chiefly insisted on—"(3) The capital of £60,000 not having been subscribed for, and no lawful resolution of the directors to begin business on less having been made and recorded, the directors were not entitled to begin business and make calls to carry it on." The plea is founded on article 81 of the articles of association, which provides—"The directors may commence the business of the Company as soon as they see fit, notwithstanding the whole of the capital may not be subscribed for or taken." The fact of the whole of the capital not having been subscribed is therefore not in itself an objection to the directors commencing business. But it is maintained that they are not entitled to commence business unless they have come to a formal resolution to do so. The ground of this contention is that article 93 provides that the directors shall cause minutes to be made of the proceedings of all their meetings. I cannot say that a formal resolution to commence business is required. Article 81 leaves it entirely in the hands of the directors to commence business.

The other objections are directed to the evidence on which the Sheriff proceeded in holding the pursuers' case to be made out, as to the defender being still on the register of shareholders, and as to the calls having been duly made. The register has been kept in accordance with the Act of Parliament: it contains all the necessary particulars. The objection founded on article 133 is certainly the thinnest I ever heard. That article directs that notices are to be sent to shareholders by prepaid letters. It is assumed that the notices of calls were sent and received. But we are asked to suppose that the call notices were not prepaid!

The other Judges concurred.

The Court refused the appeal.

Agents for Pursuers—J. & R. D. Ross, W.S.
Agent for Defender—John Walls, S.S.C.

Wednesday, July 10.

ROBERTSON, FERGUSON, & CO. *v.* HUGH MARTIN & SONS.

Process—Competency of Appeal—Sheriff-court Act, 1853 (16 *and* 17 *Vict. c.* 80), § 22.

In a Sheriff-court action the pursuer concluded for £25 of damages for breach of contract, with interest from the date of citation. The Sheriff gave decree for £25. *Held* that an appeal to the Court of Session was competent.

Sale—Verbal Contract.

Circumstances in which it was *held* that a completed verbal contract of sale was proved, and that the neglect of the purchaser to answer a subsequent letter by the seller embodying the terms of the contract, and containing a request to acknowledge receipt of the letter, did not cancel the contract.

This was an appeal from the Sheriff-court of Lanarkshire at Airdrie. The pursuers are iron merchants in Glasgow, and the defenders, iron manufacturers at Coatbridge.

The summons concluded for payment of £25, "being loss and damage sustained and incurred by