

Friday, July 4.

OUTER HOUSE.

[Lord Rutherford Clark.]

TODD & HIGGINBOTHAM v. CORPORATION
OF GLASGOW.*Process—Minute of Abandonment—Terms upon which
allowed to be withdrawn.*

One of three pursuers, after the record in an action had been closed and a remit had been made to a man of skill, gave in a minute of abandonment, and the usual interlocutor remitting the defenders' account of expenses to the Auditor for taxation was thereupon pronounced. Thereafter, on the report of the man of skill being lodged, and before the Auditor's report which had been lodged, was approved of, leave was craved to withdraw the minute of abandonment, which was allowed to be done on payment of all expenses connected with the proposed abandonment.

Counsel for Pursuer—Rhind. Agents—J. L. Hill & Co., W.S.

Counsel for Defenders—J. P. B. Robertson.
Agent—T. J. Gordon, W.S.

Tuesday, July 8.

SECOND DIVISION.

[Lord Adam, Ordinary.]

SIVRIGHT v. STRAITON ESTATE COMPANY
(LIMITED).*Superior and Vassal—Casualty—Conveyancing Act
1874 (37 and 38 Vict. c. 94), sec. 4, subsec. 4—
Valuation of Minerals—Period at which Valuation to
be made for Payment of Casualty.*

Lands fell into non-entry in November 1872. The superior in 1873 granted a precept of *clare constat* in favour of the heir of the last entered vassal, which was not recorded, and on 9th July of that year the trust-dispensee of the same last entered vassal was infeft by recording a notarial instrument in his favour, but no casualty was paid.

In November 1876 the trust-dispensee executed and recorded a disposition of the subjects, the profits of which were chiefly mineral, in favour of A, a singular successor. The superior having raised an action in May 1877 against A for payment of a casualty of a year's rent, in which the former was successful (*ante*, June 12, 1878, vol. xv. p. 622), the question arose which year was to be taken as the criterion of the composition due.

Held that the basis should be a sum equal to ten years' purchase of the average mineral rents payable for three years, and interest at 4 per cent. thereon.

Observed per Lord Justice-Clerk that the infeftment of the defenders in 1876 did not operate in any view, the fee being already full in virtue of the implied entry operated by the Act of 1874, and further, that in his

view the date of demand had nothing to do with the question.

Mines and Minerals—Casualty.

Procedure followed by the Court and by the reporter to whom they remitted in a valuation of minerals for the purposes of payment of a casualty.

This action was raised by Mr W. H. R. B. Sivright of Southhouse against the Straiton Estate Company (Limited), incorporated under the Companies Acts 1862 and 1867, to have it found and declared "that in consequence of the death of Peter Brash, merchant in Leith, who was the vassal last vest and seised in all and whole the town and lands of Straiton, and both halves thereof, &c. . . . and in all and whole these five rigs of land, with houses, biggings, and yards thereof, commonly called Soutterland, together with, &c. . . . all lying within the barony of Southhouse and sheriffdom of Edinburgh, a casualty being one year's rent of the said lands (with the exception of a part conveyed away) became due to the said W. H. R. B. Sivright, as superior of the said lands, upon the 15th day of November 1876, being the date of the infeftment of the said The Straiton Estate Company (Limited) in the said lands of Straiton and others," &c., and claiming payment of £1930, 19s. 2d. as the amount of the year's rent.

Peter Brash, who had been infeft in the lands in question, had died on 8th November 1872.

It was averred on behalf of the defenders that Brash's son, Peter Brash junior, was entered with the superior by a writ of *clare constat* granted in his favour and duly recorded in the register of sasines, and that therefore the fee being full, the pursuer was not entitled to demand a casualty till Brash junior's death.

In answer to this the pursuer alleged that the writ of *clare constat* was granted at the request of the accepting trustee under the trust-disposition and settlement of Peter Brash senior, and that the writ was not intended to confer, and did not confer, any permanent right, and that no infeftment had ever passed thereon. Further, that the estate of Peter Brash senior was insolvent, and that the requisite consent of his heir was not asked, or at least not obtained, to the completion of an entry under the said writ; also that the writ was granted without any evidence of propinquity, and without the heir having served to his father or consented to the writ being applied for.

These statements were denied by the defenders, who explained that the agents who acted for Mr Brash's trust-estate, on being called on for an entry, offered to the then agents for the pursuer Mr Brash junior as vassal, and obtained delivery from them of the writ of *clare constat* above mentioned. The defenders had become proprietors of the lands in question by purchase in November 1876 from Mr W. W. Stephens, merchant, Leith, Mr Brash senior's sole accepting trustee appointed by his trust-disposition and codicil thereto dated February 1869 and November 1872, and recorded Jan. 18, 1873, and a disposition in their favour was granted by him.

The pursuer contended that Mr Stephens had made up his title by notarial instrument (recorded 9th July 1873), proceeding on the disposition in favour of Brash senior and his trust-disposition; that the effect of these deeds, assuming the writ of *clare constat* to be valid, was to leave an estate of mid-