The other question which was raised by Mr Blackburn I do not treat as being before us, and I express no opinion upon it. All the parties seem to have agreed that the question of whether this sum of £217,350 represented interest or capital was the question for decision, and upon that point I have no hesitation in saying that I agree entirely with the judgment of the Inner House.

LORD ROBERTSON — The circumstance that for convenience the year 1898 was inquired into instead of 1899 does not affect the question before the House, for the parties accepted the figures as reached as applicable to the year of assessment.

The question then is, was this sum of £212,000, which admittedly was remitted, profits or gains of the year? As the whole money remitted came out of a bank account, it is impossible to identify the money, and the facts of the case must furnish the inference. On this question of fact it seems to me that the judgment of the Court of Session is clearly right. First of all there is the fact of remittance in two consecutive years; for the year 1898 is taken as fairly representing the year 1899. There is no suggestion that any exceptional reason required remittances of capital in either year or in both. On the other hand it is certain that the amount of invested capital left behind in the colony, after these remittances, is larger than before, so that the capital is fully accounted for. Well then, what is done with this so-called capital remitted? The answer is, exactly what would be done with profits. The inference from these facts is that the moneys remitted were in fact profits, and, in the absence of anything to the contrary, profits of the year in which they were remitted.

Appeal dismissed with costs.

Counsel for the Appellants — Haldane, K.C. — Blackburn. Agents — Dundas & Wilson, C.S., Edinburgh; Grahames, Currey, & Spens, Westminster.

Counsel for the Respondent—Attorney-General (Sir R. B. Finlay, K.C.) — Lord Advocate (Graham Murray, K.C.)—A. J. Young. Agents—Philip J. Hamilton Grierson, Solicitor of Inland Revenue for Scotland — F. C. Gore, Solicitor of Inland Revenue.

Monday, May 25.

(Before the Lord Chancellor (Halsbury), Lord Shand, Lord Davey, and Lord Robertson.)

EARL OF HOME *v.* LORD BELHAVEN.

(*Ante*, July 19, 1900, 37 S.L.R. 990, and 2 F. 1218.)

Superior and Vassal—Casualty—Composition—Minerals—Method of Ascertaining Amount of Composition from Minerals—Act 1469, *c.* 36—*Tenures Abolition Act* 1846 (20 *Geo. II. c.* 50), *sec.* 12.

Held (*aff.* judgment of the First Division with Three Consulted Judges) (*following Allan's Trustees* v. *Duke of Hamilton*, January 12, 1878, 5 R. 510, 15 S.L.R. 279) that the returns derived from minerals in the course of being worked are to be taken into account in fixing the amount of composition due to a superior; and (2) (*rev.* judgment of the First Division with Three Consulted Judges) that the amount due to the superior was the amount of the rents and royalties received by the vassal for the year in which the composition became exigible, subject to all proper and usual deductions.

This case is reported *ante ut supra.*

The Earl of Home, pursuer and reclaimer, appealed to the House of Lords.

Lord Belhaven, defender and respondent, presented a cross appeal.

At delivering judgment—

LORD CHANCELLOR—I have had an opportunity of considering the judgment prepared by my noble and learned friend Lord Robertson, and I feel I could certainly add nothing to the cogency of the reasoning or the precision with which that reasoning is stated. I therefore content myself with saying that I entirely agree with the judgment which my noble and learned friend has prepared.

LORD SHAND—The learned and anxious opinions of the Judges of the Court of Session, and the examination of the statutes and authorities which have thus been considered, have been of great assistance to your Lordships in dealing with the arguments in the important questions raised by this appeal, and at the close of the debate I proposed in my judgment also to enter fully on the consideration of the nature and extent of the superior's right to the casualty to be paid to him on the entry of a singular successor. Under the statutes of 1469 and 1669, relating to apprisings and adjudications respectively, and looking to the terms of the Statute of 1747, the language of the opening words of section 12, which is so important, I am satisfied (1) that the right extends to a year's rent or maill "as the land is set for the time;" (2) that this rent or maill includes mineral rents where coal or other mineral is being worked; and (3) that the actual rent payable on the year of entry, including the return for minerals where these, although not let, are worked by the vassal himself, is the measure of the superior's right. An opportunity has been given to me of reading and considering the terms of the judgment of my noble and learned friend Lord Robertson to that effect, in which his Lordship has fully given his reasons for coming to that conclusion, and as my judgment would only proceed on the same grounds, I refrain from saying more than that I entirely concur in the judgment his Lordship is about to give. I have only to add, that I think the case of *Belhaven*, 23 R. 423, in which his Lordship as Lord President gave the leading judgment, is a strong authority on the points that a coal rent is to be included in the rent for the year, and that the actual rent

for the year, and not an estimate made on an average of years, or a percentage based on the value of minerals worked, and still remaining, is any proper measure of the year's rent or maill to which the superior is entitled, and that I think the terms of the Aberdeen Act do not in substance vary from the language of the statutes which apply to the present case.

LORD DAVEY—If I thought that a settled construction of the Acts of 1469, 1669, and 1747 had been adopted by the Scottish Courts in accordance with the views expressed by the learned Judges who formed the majority of the Court in the present case, I should have followed that construction without hesitation, although it might not have commended itself to my judgment if the matter had to be considered *de novo*. I have, however, carefully examined all the cases which have been referred to, and without pretending to reconcile them all with each other, I do not think that the general effect of them is favourable to the argument of the respondents.

If I understand the views expressed by Lord Kinnear correctly, he seems to be of opinion that prior to the Act of Geo. II. there was no composition which the superior was by law entitled to receive on entry of a singular successor, and no legal limit to the amount which the superior might demand, but the payment of a year's rent was a matter of practice and usage only based on the analogy of the Acts relating to apprisers and adjudication, and being a matter of practice and usage only the Court was at liberty to modify, and did modify, the words of the earlier statutes according to its ideas of what might be equitable in any particular case.

I do not so construe the Act of Geo. II., and I think the learned Judge has overlooked the effect of the preamble to the 12th section of the Act. It is there recited that the methods of procuring entry . . . by singular successors or purchasers . . . theretofore practised were tedious and expensive. It appears that prior to the Act a practice had grown up whereby a disponee might, by a fictitious adjudication, compel the superior to receive, and superiors therefore did ordinarily enter, disponees upon payment of a year's rent without putting them to the circuit and expense of an adjudication (Bankton, tit. iv.). I understand that it was this method of procuring entry by means of a fictitious adjudication that was described as tedious and expensive in the 12th section of the Act of Geo. II., and that the fee or casualty which the superior was by law entitled to receive, referred to in the 13th section, is a year's maill as the land is set for the time, or as it is called in the Act of 1669 "the year's rent of the lands and others adjudged." Now, wherever and so far as a payment or the conditions on the exercise of a right are determined by statute, there is no room for equitable considerations in applying it, and where the majority of the learned Judges seem to me to have been led astray is in seeking something which they call the constant annual value of the lands arrived at by what they conceived to be equitable considerations, instead of the year's maill or rent appointed by the statute to be paid.

I proceed now to examine some of the cases cited in order to ascertain the principles upon which the year's maill or rent has been arrived at. One of the earliest and most important cases is that of *Monkton* v. *Yester*, decided in the year 1634, and reported Mor. 15,020. It was there held that where the representative of a vassal who has sub-feued charged the superior to infeft him the superior was obliged to do so on receipt of the feu-duty due by the sub-vassal and not the whole rent or annual value of the lands. This was followed in *Cowan* v. *Elphinstone* in 1636 (Mor. 15,055), and *Cockburn Ross* v. *Heriot's Hospital* (1815), F.C. The judgment in the latter case was brought by appeal to this House, and affirmed by Lord Eldon (2 Bli. 707). The importance of these cases is, first, that they affirm that a feu is within the expression "as the lands are set," and secondly, they affirm that what the superior is to get for this composition are only the fruits for the year which the vassal himself would be entitled to, notwithstanding that the lands may have been covered with buildings producing a vastly higher rent to the sub-feuar, or, in other words, that the superior stands in the place of the vassal as regards the maills or rent for the year for better or for worse. As was said in *Cowan* v. *Elphinstone*, "the Lords found the charger could pay no more to the superior but a year's duty of that which he was to get himself when entered."

The next step in the construction of the statutes was the mode in which the case where the charger was himself in occupation of the lands which were not set should be dealt with. The case at first sight seems not to be within the literal terms of the statute. But on the one hand the lord could not be deprived of his composition because the charger was in possession, and on the other hand the latter could not be deprived of his right to be infeft. It was therefore decided that the superior was entitled to the rent which the lands would produce if let. In *Blantyre* v. *Dunn* (20 D. 1188) Lord Curriehill said—"According to the established construction of this enactment the measure of the composition payable by such an entering vassal is the rent payable to him by his tenant on the lands at the time of entry if they be then set in lease to a tenant, or the sum for which they might then be let if they are in possession of the vassal himself." And in *Stewart* v. *Bulloch* (8 R. 381) this was extended to shootings not then let, and it was held those shooting rents must be taken into account as well as agricultural rent. I observe, in reference to an argument addressed to us, that shooting rents, like mineral rents, were probably unknown in the year 1469. It may be said that this decision was based on the equity or analogy of the statute. If so, it was a very plain equity, but I should prefer to say

that the year's maill is the principal subject, and the words "as the land is set for the time" are explanatory or exegetical, and as the superior, if in possession, could have let the land or shootings (not being already in lease) the rent which might have been obtained is, properly speaking, the year's rent.

I pass over the numerous cases in which the question has been discussed what deductions should be allowed to the entering vassal in arriving at the year's rent payable to the superior. These are matters of detail which do not affect the broad principle, and matters, I will add, on which the Court might properly pay regard to any established practice or usage. The only cases that we were referred to as justifying the principle of averaging, or what is called an equitable modification of the words of the statute, prior to the *Duke of Hamilton* v. *Allan* (5 R. 510), are the cases of *Paterson* v. *Murray*, 1637 (Mor. 1055); *Magistrates of Inverness* v. *Duff*, 1771 (Mor. 9300); and *Campbell* v. *Hamilton of Westenra* (10 Sh. 734). The first case was that of an appriser, and, the debt being small, the Lords modified the year's rent proportionally. This cannot, in my opinion, be seriously treated as a decision on the construction of the statute. In the second case the principal question discussed was whether under the provisions of the charter the defenders, who were singular successors, were liable in a year's rent or in double the feu-duty. But there was a subordinate question whether, in computing certain salmon-fishings, the period of seven years, which the Lord Ordinary had fixed, was too short. It did not appear under what circumstances the Lord Ordinary had fixed that period, or whether the salmon-fishings were in lease or in possession. It may have been a method for fixing the rent at which they might be let. In the third case the Court allowed interest on a grassum or fine which had been previously received by the vassal on granting a sub-feu at a small feu-duty. I do not pretend to explain the case or reconcile it with the terms of the statute.

The Lord Advocate, for the respondents, informed your Lordships that he intended to dispute the decision in *Duke of Hamilton* v. *Allan*, and contend that mineral rents were not to be taken into account in determining the amount of the composition. But he did not direct much argument to this point, and his argument was chiefly directed to justifying the mode in which the composition had been arrived at by the Lord Ordinary and the majority of the Judges in the Inner House. It may be that his criticism on one of the arguments put forward in *Allan's* case, which was based on the right of the superior in case he had to take possession for non-entry, was sound. But I am not sure that this is so, because the singular successor frequently waits until the death of the vassal, who has disponed the lands to him when the lands are in non-entry, and it may well be that the Legislature, in fixing one year's rent as the composition, may have had in mind what would be the right of the superior in a case of non-entry, and intended to limit it to one year. But however this may be, I have no doubt in my own mind that the mineral rent on open mines ought to be taken into account in ascertaining the right of the superior, and that the principal point in *Duke of Hamilton* v. *Allan* was rightly decided, and I am satisfied with the reasons for their opinion given by the learned Judges in that case.

I also agree with the opinion of the three learned Judges who formed the minority in the Inner House that the composition must include the mineral rents received by the respondent in the year of entry, subject to proper deductions, as to which there was no dispute before us. I think that this follows from the principle which I have deduced from the words of the statute as interpreted by the Scottish Courts, viz., that the superior is entitled to the year's fruits which the vassal himself receives, or is entitled to receive, in the year of entry. The superior is confined to this when it is to his disadvantage, as in the case of a sub-feu, and he is entitled to the benefit of the principle when it is in his favour. If this be the principle, the question arises, what is the year's rent in the hands of the vassal? It is on this point that the decisions on the rights of limited owners of settled estates and on the Aberdeen Act are important. I find it established in the law of Scotland that the mineral rents and royalties of open mines are yearly rent in the hands of the mine owner, and may be received and retained as such by a liferenter in competition with the owner of the fee, or may be assigned as provision for a widow under the Aberdeen Act. If, then, the superior's right is to stand in the place of the vassal for the year in question, he is entitled to whatever the vassal might have received and retained under the name of rent.

I have thought it right to state the reasoning which has led me to this opinion on account of the importance of the case and the division of opinion in the Inner House. Otherwise I might have contented myself with saying that I adopt the very fully and carefully reasoned judgment of the Lord President. His Lordship says — "What appears to me to be a fatal objection to the course proposed by the Lord Ordinary is that such a percentage as would be given to the superior under it would not be in any sense a maill or rent of the lands, including the minerals, for any year, or even for any average of years." I agree.

I am therefore of opinion that on the first appeal of Lord Home the interlocutor appealed from should be reversed, and instead thereof the interlocutor of the Lord Ordinary should be recalled, and it should be ordered that the pursuer is entitled by way of composition to the full amount of the rents and royalties which accrued due in the year from Whitsunday 1894 to Whitsunday 1895 subject to all proper deductions. If the amount is admitted it should be stated in the order,

and the respondent should pay the costs here and below. The cross appeal should be dismissed with costs.

LORD ROBERTSON—The right of a superior to a composition from a singular successor demanding an entry in that character was given by the Act 20 Geo. II. c. 50. Although under the modern statutes the respondent is held to be already entered, his liability to the superior is still that stated in the Act of Geo. II. Now, what the superior is declared entitled to by the Act of 1747 is, "such fees or casualties as he is by law entitled to receive upon the entry of such purchaser." The first question in the present appeal is to what fees or casualties was a superior in 1747 entitled upon the entry of a singular successor. A great amount of learning and research has been bestowed upon sources of information external to the statute, but I think that the statute contains within itself an infallible clue to the answer. The opening words of the 12th section (which have not been referred to in any of the opinions of the majority of the Court of Session) are as follows:—"And whereas the methods of procuring entry by heirs or singular successors or purchasers of lands in Scotland, that are held of subject superiors, heretofore practised, are tedious and expensive," and then follows the new mode, viz., to charge the superior by letters of horning. The preamble of the section therefore asserts that singular successors were not without methods of procuring entry, but describes those methods as tedious and expensive. What the statute goes on to do is to provide an expeditious and cheap way of procuring entry, and then it says in section 13 that the superior is to get the same fees or casualties as he is by law entitled to receive. I should have thought, and I think, it perfectly plain, that this means that he is to get the same fees and casualties under the new and simple system as he would have got under the old and roundabout system. All the change that is made is in the procedure.

Now, when it is further inquired what were the tedious and expensive methods, the answer is easy; the singular successor was collusively made a creditor of his seller, and in that character forced an entry as an appriser or adjudger. To use the language of Lord Low, one of the majority in the Court below, "the form of apprising or adjudging the lands for a price was gone through and the superior was thereby compelled to receive the disponee upon payment of a year's rent under the old Acts." Those old Acts are 1469, cap. 36, about apprisings, and 1669, cap. 18, about adjudications. What the creditor had to pay under each was the same, viz., a year's rent, and the words of the latter of those two Acts are peculiarly clear and forcible in expressing this identity. It asserts that "by several Acts of Parliament and constant practick of the kingdom there is one year's rent of all lands, annual rents, and others apprised, due and payable to the superior of the said lands and others," and that "there is the same reason in cases of adjudications as apprisings," and then it goes on to enact that superiors "shall not be holden to grant any charter for infefting the adjudger till such time as he be paid and satisfied of the year's rent of the lands and others adjudged in the same manner as in comprisings," and it ends by declaring "that in all cases adjudications shall be in the same conditions with comprisings as to superiors." It seems to me therefore to be past all doubt that the words of the Act of 1469 are the ultimate criterion of the rights of singular successors, adjudgers, and apprisers equally.

That this is the true explanation of the Act of 1747 is, I think conclusively proved by the authority of Bankton, whose Institute was published four years after the Act of 1747. In the four passages to which we were referred he expounds the statute in a sense which admits of no dubiety whatever, and wholly excludes the idea that the Act, when it spoke of what superiors were by law entitled to receive, meant what they would be entitled to receive if they and the vassals agreed to it.

The conclusion to which I come then is that the Statute of 1747 has by direct enactment made the formula of 1469 the measure of the superior's rights for the entry of singular successors—"a year's maill as the land is set for the time"—and the Act of 1669 uses the word rent as equivalent to maill.

Lord Kinnear in his very elaborate opinion does not refer to Bankton, nor does he discuss the 12th section of the Act 1747, which states the existing right of a singular successor to procure an entry by a tedious and expensive method. His Lordship's statement that "the only law which entitled" the superior "to a fee on the entry of a voluntary disponee was that which rested on established usage, because the earlier statutes do not apply to the case," can only be supported if we read "voluntary disponees" with the addition which is made in an earlier sentence "presenting themselves to the superior as such." But then what Bankton says, and what I think the Act of 1747 itself plainly implies, is that before that Act the obligation of the superior to enter and his right to a casualty on entering arose when the "voluntary disponee" presented himself not "as such," but as an adjudging or apprising creditor.

In holding that the superior's right to a composition on the entry of a singular successor is measured by the language of the Act of 1469 I do so with the more confidence that this has been taken for granted by our highest judicial authorities, and as far as I know was never questioned until this decision. I am content to cite two proofs of this prevalent opinion which will hardly be called in question. "It is not disputed," says Lord President Inglis in *Stuart* v. *Bulloch*, 8 R. 381, "that the superior's right to a composition depends entirely on the old Statute 1469, c. 36, and what he is entitled to require in name of composition is in the words of the statute

'a year's maill as the land is set for the time.'" Again, Lord Rutherfurd Clark (in the same case)—"The composition payable by a singular successor is a year's rent, or, to use the words of the Act 1469, c. 36, a year's maill as the land is set for the time."

In support of the conflicting theory that the Act 1747 appeals not to the earlier statutes but to practice, reference has been made to a number of decisions where practice has been considered. As to these, however, it is necessary to distinguish. Even if, as I think is the case, the rule is to be found in the statute, there are many instances in which the practice may be legitimately inquired into in the application of the rule, or, as the Lord President says, for "clearing a point on which the statute was silent." But as this question recurs on another branch of the case, I reserve for it a brief analysis of the decisions referred to.

Holding then the measure of the superior's right to be a year's maill as the land is set for the time, I proceed to consider the two questions which arise—(1) Does the rent or do the royalties payable by the tenant under a mineral lease form part of the year's maill at all, and (2) if so, is what is actually paid by the tenant to be charged, or is some other sum to be stated on the principle of the judgment appealed against?

1. On the first and more general question I think that the superior is entitled to hold the produce of minerals to be part of the year's rent. The considerations pointing in an opposite direction are too familiar to require repetition. They have been in full view of the Courts and of Parliament during the long course of decision and of legislation which is deduced in the judgment of the Lord President. Setting on one side for the moment the fact that for twenty-five years the matter directly in hand has been held as settled in Scotland, the annual yield of minerals has in many other relations for long been held and treated as income. Nor do I think it immaterial to observe that where lands were in non-entry a superior did in fact enjoy the produce of the minerals. I am aware that Lord Kinnear has anxiously protested against the use of this argument which was made in the case of *Allan*, and I think he has hit a blot in some of the opinions. But although in the case then in hand the fee may have been full, and therefore that superior had not the remedy against that vassal, yet I hope I shall escape a charge of feudal heresy if I say that the ultimate right of the superior when the lands came to be in non-entry is not irrelevant in considering whether the Legislature must not be taken in 1747 to have intended the superior to have a year of the whole yield of the estate as it was in fact coming in. On the whole matter I think that the House does well to support the decision in *Allan* on the general question and to dismiss the cross appeal.

2. If, then, coal is to be taken into account in fixing the composition due, the reasoning which supports that conclusion seems to lead straight to the result that what the vassal drew from his tenant in the year of the entry is the amount due. The theory of the majority is certainly a most singular one, and has no relation at all to the rule of the Act 1469. I observe that the learned Judges who form the majority say very little in its favour, and when it is examined it turns out to be unsupported either by principle or by authority. On the face of it, it offers no formula which even pretends to square with the case in hand, and if proposed as a general rule it breaks down at every step. I do not dwell on this, for it is sufficiently discussed by the Lord President, and the appellant has pointed out with justice that if it be applied to large coalfields with a long expectation of life the results are astounding.

Where the Lord Ordinary got this formula does not very clearly appear—certainly not in *Sivright* (6 R. 1209), which is the only authority offered in its support, for there, as pointed out by Lord Adam, the basis of capitalisation was the average of three previous rents, and here it is an estimate of the remaining minerals. But if it be said that at least the principle of capitalisation was settled in *Sivright*, then I must take leave to point out that *Sivright* is in that respect a most unsatisfactory decision. Capitalisation had never been affirmed by any previous decision, and yet in *Sivright* it was so completely taken for granted that counsel were not called on to argue in support of it. And how lightly the Second Division sat to the principle of capitalisation once they had adopted it is shown by the next case—*Sturrock*, 7 R. 799—where the year's rent was followed.

The only justification for such arbitary proceedings must be found in the theory, never consciously adopted, that the Court sat as arbitrators free from any statutory rule. Now, first of all I think, for the reasons already given, that there is such a statutory rule; but, second, an examination of the decisions relied on by the respondent shows what slender ground there is for saying that the Court of Session has disregarded that rule and looked to practice as the standard. In some cases the matter was not judicially decided at all; in some the matter was clearly, and in others arguably, undetermined by the terms of the statute, and therefore legitimately admitted of exposition by custom. The total number of cases is inconsiderable.

The first case mentioned by Lord Kinnear is that of the Inverness salmon fishings (1769, M. 15,059, 1771, M. 9300) and grass lands, and his Lordship says that it was there "held" that salmon fishings and grass lands must be estimated at the medium rent for a period of years. But the report in Morison shows that it was only by concession that an average of seven years was adopted, the contested question being between seven years and twenty, and the pursuers, who proposed seven, saying that this "was an indulgence, the current rent being the standard." The same explanation applies to the case of *Campbell* v. *Westenra* (1832, 10 S. 734), cited by the respondent. It was not the Court that decided, but the

vassal who concealed, that interest on a *grassum* should be included in the composition, this being done to parry a demand for a year's rent. As regards the two teind cases, it is obvious that the question then decided on practice was one unprovided for in the statute, and although it might have been decided apart from practice, yet the practice was no doubt instructive. But in these cases, as in the others cited, and particularly in *Aitchison* (1775, M. 15,060), I fail to find any ascription to custom alone, as opposed to the Act 1469, of the authority to settle the composition of the superior—the question was never raised. They are treated, rightly or wrongly in each instance, as cases where, to use the Lord President's phrase, practice would "clear a point on which the statute was silent." The remaining cases may be briefly noticed. If *Paterson* v. *Murray* (1637, M. 1055) be rightly reported, no principle maintained even by the respondent can support it; for, in a case of land pure and simple, the Lords modified the composition to 300 marks, "albeit the lands were worth 800 marks at least;" and this was the case of a compriser, and therefore directly within the terms of the Act 1469. The case, however, has its own lesson, for it, and the very much more recent case of *Wardlaw* (1875, 2 R. 368), show that in some instances the Court of Session have, even when administering unambiguous statutes, adopted modifications of the statutory rule, which cannot be reconciled with the authority of statute law. It may be permissible to add that in Scottish jurisprudence there was in former days less attention paid than now to the terms of the statute being administered, and more to opinion, whether expressed in books or in practice.

The decision of *Cockburn Ross* (June 6, 1815, F.C.), which was affirmed by your Lordships' House (6 Paton 640, 2 Bligh 707), seems to me in no way to help the respondent's case, for the superior there was given all that the vassal drew, viz., the feu-duty.

On these grounds I am unable to adopt the conclusion of the majority of the Seven Judges. I think that coals are within the Act of 1747, and are to be taken into account in fixing the composition, that they must therefore follow the rule of the Act of 1469, and that the royalties paid in the year of entry are accordingly due. They are, just as much as fixed rent, the sum fixed on as the landlord's share of profits, and therefore rent. I consider the mode of calculation adopted in the Court of Session to be contrary to the statute, and unsupported either by reason or authority.

Interlocutors appealed from reversed with costs, and cross appeal dismissed with costs.

Counsel for the Earl of Home—Solicitor-General for Scotland (Dickson, K.C.)—Younger. Agents — Strathern & Blair, W.S., Edinburgh — John Kennedy, W.S., Westminster.

Counsel for Lord Belhaven—Lord Advocate (Graham Murray, K.C.)—Dundas, K.C. Agents—Dundas & Wilson, C.S., Edinburgh —Grahames, Currey, & Spens, Westminster.

COURT OF SESSION.

Saturday, May 16.

FIRST DIVISION.

[Lord Pearson, Ordinary.

THOMSON & COMPANY *v.* MEIK.

Process—Printing—Bill Chamber—Note of Suspension Passed in Bill Chamber and Transmitted to Court of Session—Failure to Print within Eight Days—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *secs.* 26 *and* 90.

The respondents in a note of suspension, which had been passed in the Bill Chamber and transmitted to the Court of Session, moved that the note should be dismissed in respect that prints were not lodged within eight days after the transmission of the process from the Bill Chamber.

Held that the provision of section 90 of the Court of Session Act 1868 that in a Bill Chamber proceeding, as soon as the interlocutor passing the note has become final, "the cause shall become for all purposes an action depending in the Court of Session," did not render the rules as to the making up and printing of the record in an action depending in the Court of Session, enacted in section 26 of the Court of Session Act 1868, applicable to a note of suspension transmitted from the Bill Chamber, and motion *refused*.

The Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 90, enacts—"In all proceedings in the Bill Chamber, as soon as an interlocutor passing the note has become final, . . . the cause shall become for all purposes an action depending in the Court of Session, and may be immediately enrolled by either party in the motion roll of the Lord Ordinary to whom it is marked. . . . Section 26— . . . The pursuer shall cause the pleadings which are to form the record to be printed, and shall within eight days from the lodging of the defences or revised pleadings, as the case may be, deliver two printer's proofs thereof to the agent or to each of the agents of the other parties, and also to the Clerk to the process, who shall transmit the same to the Lord Ordinary: . . . Provided that, if the pursuer shall fail to deliver the printer's proofs as aforesaid, the defender may enrol the cause, and move for decree of absolvitor by default, which decree the Lord Ordinary shall grant, unless the pursuer shall show good cause to the contrary."

Helen Jean Meik, 30 Chalmers Street, Edinburgh, presented a note of suspension and interdict against Thomson & Company and another. The note was passed in the Bill Chamber, and on February 26th the process was transmitted to the Outer House. No order was taken to print. A record was made up and prints lodged on March 13th.