

Saturday, July 3.

FIRST DIVISION.

MACDOUGAL AND OTHERS.

*Court of Session Act 1868—Special Case—Judgment of Court.* In a Special Case under section 63 of the Court of Session Act 1868, when parties wish a judgment which can be extracted and appealed to the House of Lords, they must ask a judgment, not an opinion.

This was a Special Case under the Court of Session Act 1868. The 63d section of that Act declares that any parties interested in the decision of a question of law shall be agreed on the facts, and shall dispute only on the law applicable thereto; it shall be competent to present to the Court a special case, "setting forth the facts upon which they are so agreed, and the question of law thence arising upon which they desire to obtain the opinion of the Court; and which case may set forth alternately the terms in which the parties agree that judgment shall be pronounced, according to the opinion of the Court, upon the question of law aforesaid. When a special case is laid before one of the Divisions, the Court shall . . . give their opinion, and pronounce judgment, as the case may be, and such judgment shall be extractable in common form. . . . Judgments pronounced in virtue of this section shall be liable to review by the House of Lords, unless such review shall be concluded of consent of all parties." In this case the parties asked only the opinion, and not the judgment, of the Court.

The LORD PRESIDENT, in advising the case, drew attention to the distinction between these, and expressed a wish that it should be known that where parties wish a *judgment* which can be extracted and taken to review by the House of Lords, they must ask a judgment, and not an opinion, in their special case.

MILLAR (Q.C.) and WATSON for Macdougall.  
Agents—Adam & Sang, S.S.C.

CLARK and BIRNIE for other parties.  
Agent—George Binny, W.S.

Saturday, July 3.

SECOND DIVISION.

MINISTER OF BANCHORY-DEVENICK *v.* THE HERITORS.

*Teinds—Valued Lands—Moss-Lands—Parts and Pertinents—Decree of Valuation.* Held (diss. Lord Cowan) that moss-lands which did not merely yield "moss-mail" but formed an out-run to, and were pastured in connexion with lands admittedly valued by a decree of valuation, must be held to be included in the valuation, even when they were especially mentioned in the titles and not in the valuation.

In this case, which involved the question whether a number of parcels of land in the parish of Banchory-Devenick were to be dealt with as unvalued, and so available to make good to the minister a large augmentation obtained by him from the Court of Teinds, the House of Lords, on 14th May 1867, held that certain lands were to be taken as unvalued, and that as to certain other lands the minister was entitled to a proof before answer of his averments.

The case having been remitted to the Court of Session, a proof was allowed, and upon that proof two sets of questions arose:—(1) What were the boundaries of the lands held by the House of Lords to be unvalued? and (2) Had the minister made good his averments with reference to those other lands as to which he had been allowed a proof?

The Lord Ordinary (MURE), on 6th April last, pronounced an interlocutor in the following terms:—

"6th April 1869.—The Lord Ordinary having heard parties' procurators, and considered the closed record, proof adduced, plans, and whole process,—Finds, with reference to the lands of Barclayhill, Calseyend, and Meddens, the teinds of which were, by the interlocutor of the 3d of February 1865, found to be unvalued by the decree of valuation of 1682, (1st), That the said lands of Meddens extend to about twenty acres or thereby, as the same are coloured blue on the plan No. 304 of process; (2d) That the lands of Barclayhill extend to about fifty-eight acres or thereby, as the same are coloured blue on the said plan, and are situated to the east of the turnpike road leading from Stonehaven to Aberdeen, with the exceptions of three small portions marked Nos. 1283, 1284, and 1285 on the said plan, which are situated on the west and north of the said turnpike road; (3d), That the rest of the ground coloured blue on the said plan is part of the lands of Calseyend, and unvalued: Finds, with reference to the proof allowed by the said interlocutor, relative to the teinds of the parcels of land mentioned in the eleventh article of the condescendence, (1st), That the ground coloured yellow, and marked Lot 1 and Lot 2 of reserved moss on the said plan, and also the ground coloured yellow, and marked 'Haremess' on the said plan, to the west of the road called the Old Great South Road, are unvalued; and (2d), That the whole of the ground marked pink on the said plan is admitted to have been valued by the said decree, and that it is not proved that any portions of the ground coloured yellow on the said plan, other than the portions referred to in the preceding findings, were not valued by the said decree; and, with reference to the barony of Portlethen, referred to in the said interlocutor, finds it not proved that there were any portions of that barony the teinds of which were not embraced within the subjects specially enumerated in the prepared state of the proof, which forms the basis of the decree of valuation in 1709, and are unvalued; and with these findings, appoints the case to be put to the Roll, that parties may adjust the value of the several portions of ground found to have been unvalued, and may be heard on any other points which it may be necessary to dispose of before a remit is made to the Teind Clerk to prepare a scheme of locality, and reserves all questions of expenses.

"Note.—The leading questions arising for consideration upon the proof allowed by the interlocutor of the 3d of February 1865 relate, (1st), to the extent and value of the lands of Barclayhill, Calseyend, and Meddens, which were held not to have been valued by the decree of valuation of 1682, founded upon by the respondents; (2d), to whether there is evidence sufficient to instruct that the teinds of the lands mentioned in the eleventh article of the condescendence for the minister, or any of them, were unvalued by that decree? and (3d), to whether the teinds of these portions of the barony of Portlethen, if any, which are not em-