by the House of Lords, in the case of *Brand* v. *The Hammersmith Railway Company*, that the owner of houses cannot recover any compensation from a railway company on the ground of vibration, smoke, and noise; because these are the inevitable consequences of a railway being made, and so must be put up with by all landowners.

Lord Advocate, Mellish, Q.C., and Macdonald replied—It is true the House of Lords has now decided that noise and vibration are no ground for compensation to any owner, no part of whose lands has been taken from him, still it has not been decided that, if part of his land has been taken, he has not a right to recover compensation for damage on that ground to the rest of his property. This makes the difference between the present case and the case of *Brand* v. *The Hammersmith Company*. This is an important case, and it would be contrary to justice that the owner of houses which have been damaged in market value by a railway made so close to the houses as to render them uninhabitable, should have no right to be compensated for his loss. This item of damage has been allowed over and over again in Scotland, and the competency of the claim has never before been disputed, especially where, as in this case, part of the claimant's lands has been taken, and the rest of the property damaged by the existence of the railway.

At advising—

Lord Chancellor said it was an action of reduction brought by the railway to reduce a verdict and a judgment of the Sheriff, assessing damages payable by the Company to Robert Hunter, spirit merchant, Eglinton Street, Glasgow, in respect of the following items:—"For property taken, £1270; for the compulsory purchase of the same at 10 per cent, £127; for damage to the remaining property (only the back part of Mr Hunter's premises having been taken, and the front part, abutting on the street, having been untouched), caused by noise of trains, railway bridge across the street, smoke and general nuisance, and deterioration of tenement next the railway, £392." Two objections have been taken to this verdict, which was in a very definite form. One was, that 10 per cent. had been added by the jury, without first deducting the amount of the feu-duty from the £1270. I am of opinion that, according to their own principles of assessment, the jury have gone wrong, because they evidently meant to assess the sum in such a way as to add the 10 per cent., not to the gross total, but to the value, less the amount allowed for feu-duty, which would thus leave £631 for the 10 per cent. to be calculated on, instead of £1270. On this point, however, your Lordships are equally divided, and the result must therefore be that the judgment of the Court of Session, with which I disagree, shall stand as regards this first point. The second point is one which rests upon, and I think is completely covered, by decisions. The claims of Hunter are for damage occasioned by noise, &c., and the jury has awarded him £392 for that. Now, the cases show that the only injuries to be compensated are those which, in the words of the General Railway Acts, are done "in the execution of the works," and not what is done afterwards when the works are completed; but the Railway Company has been met with this other clause, which says that compensation shall be given for damage occasioned by the severing of lands, *or by the otherwise injuriously affecting such lands.* I cannot but think that this section of the Lands Clauses Act was not intended for a moment to entail the liabilities, and that the one rule which had been laid down was to be adhered to, viz., "That damage was only to be given in regard to injuries done in the execution of the works," and not for prospective damages. These are anticipatory evils, and for the most part come under the case of *Brand* v. *The Hammersmith Railway Company.* As to the item, however, of the bridge, it is impossible to say that there might not be damage from obstruction of light and air, and therefore the judgment of this House will be for the Company on this point; with a declaration that Hunter's rights in the matter of the bridge are reserved entire.

Lord Chelmsford concurred. He said that *Brand's* case clearly governed the present, and it would be a forced construction to put on the Lands Clauses Acts were it held that anticipatory damage was by it to be compensated. On the question of the claim in regard to smoke, that was peculiarly without support, for by a special Act of Parliament the Legislature had provided means for forcing railway companies to abate that nuisance. He also concurred on the question of the assessment of 10 per cent.

Lord Westbury thought that to take the view adopted by the Lord Chancellor and Lord Chelmsford as to the 10 per cent. involved an assumption which was warranted by the clear terms of the verdict. The jury gave a particular sum, and on that they assessed the 10 per cent. It was not for the Court to assume that they might in another view of the case have given a smaller sum. The fact was before them, and it was clear. As to the other branch of the case, that was to be decided in accordance with vicious and erroneous principles, which however had become law, and which would therefore be followed. For his own part, he concurred on the ground of a technicality, viz., that a lump sum had been given for a variety of items, smoke, &c., one of which, viz., the bridge over the road, was clearly the subject of compensation, and he therefore assented to the judgment proposed on this head; it being accompanied with a declaration of Hunter's right to claim in respect of damage to light and air.

Lord Colonsay concurred with Lord Westbury on the question of 10 per cent. assessment, and agreed as to the remainder of the judgment.

Agents for Appellants—Murray, Beith & Murray, W.S.

Agents for Respondent—Campbell & Smith, S.S.C.

Friday July 8.

LORD ADVOCATE *v.* GOVERNORS OF DONALDSON'S HOSPITAL.

Teinds—Valuation—Extract—Registration. In a process of augmentation a document in the following terms was produced:—"The landis of Wester Barres, perteining to Sir Johne Douglas, are worth and may pay in stock and teynd, personage and viccarage, aucht chalders victuall.—This is the just extract of the valuatione of the forsds landis, as is conteined in the principall register yrof, extracted by me,

Thomas Murray, advocat, clerk-deput to Sir Archibald Johnston of Wariestone, knight, clerk of register and keiper of the said registers. THO. MURRAY." The document was titled on the back "Valuatione of the Landis of Wester Barres, 1636," and had in a process in 1792 been recorded under the authority of the Court in terms of the Act 1707, c. 9. *Held*, (with First Division) that it contained everything necessary to a decree of valuation of teinds, and was to be given effect to as such.

Question, per Lord Westbury, that from the fact of the registration under the statute, the statute afforded a presumption *prima facie*, till repelled, that the instrument so registered was a genuine and authentic extract, and that it was accepted as the extract of a decreet of valuation.

The question in this case was whether the teinds of the lands of Wester Barras, in the parish of Kinneff, belonging to the Governors of Donaldson's Hospital, had or had not been valued.

The proceedings commenced by a summons of augmentation, modification, and locality at the instance of the Reverend William Mearns, minister of the united parishes of Kinneff and Catterline. On July 16, 1862, the Court of Teinds, after the usual procedure, modified a stipend of 18 chalders, half meal half barley, with £8, 6s. 8d. for furnishing communion elements, and remitted in ordinary course of process to the Lord Ordinary to prepare a locality. His Lordship appointed Mr Cornillon, S.S.C., common agent for conducting the locality of the pursuer's stipend.

The common agent then prepared a state of the teinds of the parish, in order that the augmented stipend might be allocated among the heritors in proportion to the amount of teinds in the possession of each.

Thereafter, the Lord Ordinary remitted to the clerk to prepare a locality, and on that being done, his Lordship pronounced the following interlocutor:—"The Lord Ordinary having advised the scheme of locality, No 28 of process—Approves thereof, as an interim rule of payment of the pursuer's stipend until a final locality shall be established: Ordains the common agent to furnish the pursuer with an extract of the interim decree, and to charge the account of the heritors with the expense thereof, and decerns."

The scheme so approved of was in accordance with the state of teinds drawn up by the common agent, who allocated the stipend according to the proportions there brought out.

In the scheme so prepared and approved of the lands of Wester Barras, belonging to the Governors of Donaldson's Hospital, were subjected to a certain proportion of stipend, on the assumption that they had been valued by decree of valuation dated 3d February 1636, and recorded in the Teind Office 20th June 1792, and that by that decree the value of these lands, stock and teind together, was fixed at 8 chalders of victual. On this assumption the value of the teinds of these lands was stated at one-fifth of 8 chalders of victual, or 12 bolls 3 firlots 0 pecks $3\frac{1}{5}$ lippies of meal, and 12 bolls 3 firlots 0 pecks and $3\frac{1}{5}$ lippies of beer; and the amount of stipend allocated upon the lands is proportioned to that value. The appellant objected to this mode of allocation, on the ground that in point of fact the lands were not valued, as asserted, by any decree of valuation; that the true value of the lands was £1150 per annum, and the value of the teind £230 per annum; and that the lands had thus been unjustly exempted from their due share of the common burden laid upon all the teinds of the parish for payment of the stipend.

The respondents, on the other hand, maintained that the document was a valid and authentic extract decreet of valuation, and fixed the amount of the commutation at £25, 8s. $0\frac{3}{7}$d. The extract was in the following terms:—

(Titled on Back)

"Valuatione of the landis of Wester Barres, 1636.

"*At Edinburgh, the third day of Februar, Jajvj and threttie sixt.*

"The landis of Wester Barres, perteining to Sir Johne Douglas, are worth and may pay in stock and teynd, personage and viccarage, aucht chalders victuall.—This is the just extract of the valuatione of the forsds landis, as is conteined in the principall register yrof, extracted be me, Thomas Murray, advocat, clerk-deput to Sir Archbald Johnston of Wariestone, knight, clerk of register and keiper of the saids registers. THO. MURRAY."

The LORD ADVOCATE having objected to the above mentioned state of teinds and scheme of locality, answers were lodged for the respondents. The following were their respective pleas in law.—For the objector:—"(1) The only legal proof that the teinds of any particular lands have been valued in terms of the statutes in that behalf is a regular decree of valuation obtained in a competent court against the titular and all other parties having interest; and as no such decree has been produced applicable to the lands mentioned in the foregoing statement, these lands cannot be held to have been valued; (2) the writing founded on as a decree of valuation of the said lands is not a decree pronounced by a competent court in a legal process; (3) the alleged extract is null and void under the Act 1661, cap. 46; (4) the writing founded on not being in itself a good decree of valuation, cannot be validated by being recorded in the register of old decreets; (5) the interests of the Crown as titular cannot be affected by anything that took place in the alleged proceedings for recording the said writing as an extract decree of valuation, in respect the said proceedings were *ex parte*, and were not intimated to the Crown; (6) the teinds of the said lands not having been valued, ought to have been stated on that footing, and the scheme of locality ought now to be rectified accordingly." For the respondents:—"(1) The respondents' lands of Wester Barras having been valued by the High Commission in 1636, as testified by the extract from their decreet produced to the Lords Commissioners of Teinds in 1792, and on their warrant recorded in the new register of the Commission, have been rightly stated and allocated on as valued; (2) said extract having been sustained by the Lords Commissioners of Teinds as an authentic extract from the lost records of the Court, and by their authority entered in the new register of the commission, has become as probative as the original decreet would have been had it been yet extant; (3) said extract, though containing only a portion of the original decreet, is yet complete in itself, and an authentic extract from the lost records of the Court, in the sense of the statute, and by virtue of its registration, is in law as valid and authentic as the integral entry in the old register, or the original decreet upon which the latter proceeded; (4) the procedure upon which the original decreet followed must, at this distance of time, be presumed to have been in every respect regular,

whether as regards the Court, the parties, or the proof; (5) the common law of vicennial prescription relieves the respondents from the necessity of producing the warrants of said decreet, or proving the regularity of the procedure on which it followed; (6) the valuation of the lands in question having been recognised by the Officers of State in 1792, in the action of valuation and sale at the instance of Sir David Ogilvy against them and others, the Crown cannot now be heard in challenge of it; (7) in any view, the present proceedings are not a competent mode of challenge; (8) under the circumstances no rectification of the scheme of locality is required, so far as the respondents' lands are concerned, and the objections ought therefore to be repelled, and the respondents found entitled to expenses."

The Lord Ordinary (BARCAPLE) held that the respondents had not produced valid and effectual decrees of valuation of the teinds of their lands; that the teinds were unvalued; and repelled the pleas of prescription, and that the decrees had been acted on or given effect to in former localities. On reclaiming, the First Division recalled this interlocutor, and repelled the objections for the Lord Advocate.

The Lord Advocate appealed against this interlocutor for the following reasons:—

"1. Because the document founded on by the respondents is not an authentic extract of a decree of valuation, or, at least, it is not an extract establishing that a decree was pronounced in the terms alleged by a competent court, in a process lawfully led against all parties having interest.

"2. Because the document founded on by the respondents, if it be not in itself an authentic extract decree of valuation, cannot be validated by registration under the provisions of the Act 1707, c. 9.

"3. Because, if the objections to the document in question are otherwise well founded, the appellant is not barred from stating them by any proceedings which have taken place in previous localities."

The respondents in their case made, *inter alia*, the following statements:—"At whose instance, or in what form of process, the decree of valuation from which the above was extracted was pronounced, the respondents are not in a position positively to affirm. There is sufficient evidence, however, from the sederunt book of the Commissioners for the period from 6th November 1633 to 8th February 1650 (which was recovered early in the present century from a private hand by Mr Thomson, deputy-clerk-register, and by him deposited in the General Register House), that the Commission sat on the 3d February 1636. There is also sufficient evidence that Mr Thomas Murray, by whom the extract is authenticated, was appointed clerk to the Commission on the 2d November 1649; and that, in virtue of an act of Parliament passed on 15th March of the same year, he was intrusted with the keeping of the books and registers, not only of the Commission from which he held his appointment, but also of all former Commissions.

The first process of locality of the united parishes of Kinneff and Catterline, in which the lands of Barras are situated, was raised in the year 1719. In that process, however, no question arose in reference to the valuations of the teinds in the united parishes, and therefore there was no call upon the respondent's predecessor, the then proprietor of the lands, to produce a formal decree in his favour. But, a new process of locality having been raised in 1792, it became necessary for Sir David Ogilvy, to whom the lands then belonged, to establish his position. Accordingly, in the month of June of that year, he presented a petition to the Court, in terms of the Act 1707, cap. 9, praying to have his short extract (quoted above) recorded in the particular register provided by the act. The Court, being satisfied of its authenticity, on the 20th June 1792 granted authority to their clerk to record it, and to give the petitioner a new extract, in terms of the act.

Besides Wester Barras, Sir David Ogilvy was proprietor of Easter Barras, situated in the same parish of Kinneff, and also now belonging to the respondents. These lands were unvalued when the aforesaid process of locality was raised. Sir David, however, considered that it was for his interest to have them valued. Accordingly, on the 25th of June 1792, just a few days after the formal record of the valuation of his lands and teinds of Wester Barras, he raised an action of valuation of the teinds of Easter Barras, in which the Officers of State, for His Majesty's interest, the minister of the parish, and others, were called as parties. The summons proceeded on the averment, that the pursuer was proprietor of (1) the lands of Wester Barras, and (2) those of Easter Barras; and containing the following specific statement:—"And true it is and of verity, that the teinds, parsonage and vicarage, of the lands of Wester Barras, comprehending as aforesaid, are already valued, conform to decree of valuation of the High Commission, dated the 3d of February 1636, and that the teinds, parsonage and vicarage, of the lands of Easter Barras, comprehending as aforesaid, are still unvalued." It therefore concluded for valuation of the teinds of the lands last named, which was carried out in the usual way, and decree pronounced on the 28th November 1792. All this was done with the full knowledge of the Officers of State, cited several times for His Majesty's interest, but raising no objection either to the narrative, the procedure, or the final judgment.

Sir David Ogilvy being thus put in possession of formal decrees of valuation of the teinds of his lands both of Wester and Easter Barras, produced the same in the depending locality. This was conjoined with another raised in 1806. To both of them the Crown, as titular, was again a party; and both decrees were given effect to, the Officers of State acquiescing.

A third process of locality, consequent upon an augmentation of stipend obtained by the minister of the united parishes, was raised in 1827. In this process the teinds of Wester Barras were again localled on as valued, in respect of the extract valuation of 3d February 1636 and decree conform of 20th June 1792. This was done in the knowledge and with the acquiescence of the Officers of State, who had been called as parties."

The respondents maintained that the appeal should therefore be dismissed for the following reasons:—

"1. The extract from the valuation of 1636, relied on by the respondents, was such an extract as was in view of the Legislature in passing the remedial Act of 1707; and having been presented to the Court in terms of the provisions of that Act, and registered of new on its authority, must now be held as probative and

able to make faith in judgment and outwith the same.

"2. Said extract having in 1792, in a semi-judicial process in which the Clerk of Teinds was contradictor for the public interest, been held to be an authentic extract from the lost registers of the Commissions of Teinds, in the sense of the Act 1707, cap. 9, the question of its formal validity is *res judicata*, and no objection can now be listened to except such as affects its material sufficiency.

"3. In the absence of any evidence to the contrary, the regularity of the decree of valuation from which it is an extract must be presumed: *omnia presumuntur rite et sollenniter esse acta.*

"4. The respondents having purchased their lands of Wester Barras on the faith that the teinds thereof were valued, and in the knowledge that in every locality, from 1792 downwards, the Crown, as titular, had recognised the validity of the valuation, they ought not now to be prejudiced by the Crown's unprovoked departure from its lengthened acquiescence."

The LORD ADVOCATE and M'LELLAN for appellant.

SIR R. PALMER, Q.C., and GORDON, Q.C., in answer.

At advising—

LORD CHANCELLOR—My Lords, the question that is raised by this appeal, and which has been extremely ably argued, rests upon a point which may be discussed in a very few words—namely, whether or not a certain extract or excerpt (whichever may be the proper term to give to it, for there is a question upon that), a certain document, purporting to be an extract from the Principal Register (whatever that may mean), and signed by Thomas Murray, the deputy-keeper of the registers, with reference to the valuation of the teind of Wester Barras, which extract has been subsequently, under the Act of 1707, duly entered in the special register by that Act directed to be kept, as an authentic extract from the principal records of the proceedings of the Teind Commissioners, is a document in itself, *prima facie* at least, to establish the title of the respondent in the present case to hold his land as having the teinds valued according to the purport of that document, which is thus signed by Thomas Murray, it being held therefore to show what value was put upon the teinds in 1636, when the property was so valued? As far as actual possession goes there is no question that not only generally up to the present time, but especially on three or four occasions which have occurred since 1792, when this proceeding that I have referred to was taken under the Act of 1707, these teinds have been dealt with as being valued teinds.

The document itself bears no special date as regards the delivery up of the document, but the date which it bears, and which purports to be on the face of it the date of the original thing, whatever it was, from which this was an extract, is 1636, and thus it is headed or titled on the back, —"Valuation of the lands of Wester Barras, 1636," and in the following terms:—"At Edinburgh, the 3d day of February 1636, the lands of Wester Barras, pertaining to Sir John Douglas, are worth and may pay in stock and teind, parsonage and vicarage, eight chalders victual; this is the just extract of the valuation of the foresaid lands, as is contained in the principal register thereof."

Now as to the meaning of those terms, and the construction of the language, there can be no doubt that "the register thereof" means the register of the valuation. It is "the just extract of the valuation of the foresaid lands, as is contained in the principal register thereof"—that is, the register of valuation. It is "extracted" by Thomas Murray, who describes himself as advocate, clerk-depute to Sir Archibald Johnstone of Wariestone, Knight, clerk-register, and keeper of the said registers. We have in evidence a document showing that in the month of November 1649, Thomas Murray was formally appointed by the Commissioners, under the Act of Charles the First, who sat at Edinburgh for the purpose of ascertaining the value of the teinds, and to whom fell the duty, if the Sub-Commissioners made a valuation, of affirming that valuation, or if they chose to take the matter in hand themselves, of directly settling the valuation. These Commissioners so appointed did in November 1649 admit Mr Thomas Murray to the office of keeper of the register on the appointment of Sir Archibald Johnston, who was Lord Clerk Register at that time. It is said that he was not distinctly the depute of Sir Archibald until the year 1657; that Sir Archibald, under the government of that date, held another office connected with the same subject, and then appointed him distinctly as depute. But I think there is no reason for supposing that Thomas Murray might not describe himself as clerk-depute of Sir Archibald Johnston; for it appears, by the very extract I have referred to, that in 1649 Sir Archibald Johnston was the proper person to appoint him, and that he did *de facto* appoint him, and that he was *de facto* admitted to take care of the registers.

That being so, there can be no question raised at this distance of time that Thomas Murray was the proper person to have charge of this register, or this system of registering. It may be doubted whether a thing that could be taken into manual possession, and which would now be called a register, was or was not kept—but whatever be the fit title to apply to them, he was the keeper of them; and it is clear that, being such a keeper, he was the proper person to make extracts therefrom. I am now dealing with it as if the document before us were not a copy made and registered pursuant to the Act of 1707, which was to have the same effect as the original, but as if the document before us was the thing itself signed by Thomas Murray.

Now, in whose custody do we find the extract? We find the extract in the custody of him who now seeks to avail himself of it, or rather his predecessors in the title; and as Murray was appointed in 1649, although we do not know how long he lived, we may reasonably suppose that for at least 200 years the heritors who have been the predecessors in the title of the present respondent have held their land subject only to the valued teinds pursuant to this extract, and that the persons who held it obtained that extract originally from the proper person to give it out, and that it was given out from the proper office. The only question is, whether or not it is to be taken as evidence of a decree having been made which effectually settled the value of the teinds.

It appears to me that after this distance of time faith must be given to the document itself, as regards the purpose for which it was given out, namely, on the application of a heritor to the office which Murray held, which was the office of clerk-depute to the Lords Commissioners of Teinds,

who were the proper authorities for this purpose, and as regards its being found on the register, and that no other interpretation can possibly be given to the instrument than this, that it is not a mere idle note, but that it is a document given as a document of title to the person who desired to have the extract, and who so long held it, and acted upon it. It appears that it was given, and in a solemn manner, by the person having the charge of the instrument from which this extract purports to have been made—that being an instrument detailing the proceedings of those who were competent to make the valuation by their decree and judgment effectual for the purpose for which they desired registers; and unless it was a complete and perfect instrument we must hold that it would not be entered in their books to register it. No court whatever would register its document in an incomplete or imperfect form. Again, the document would not be given out to any person as the result of what had taken place before the Lords Commissioners, and of what was to be found in their books, if it were merely a document which indicated that there had been something imperfect and incomplete which had been going forward in the course of their proceedings, and which it would be an idle and worthless thing to deliver out to those who might ask for it, and which it would have been a most improper thing on the part of the person who gave it out to hand over to the applicant, because he must have known that it was applied for for the purpose of showing it as evidence of something formally done and recorded in the office, which it was his duty to keep in the proper possession.

My Lords, I hardly need say more upon this case. I find that Lord Deas has so completely put all that I should have to say upon the subject in his opinion expressed in the other case, to which we have been referred, that I prefer using his words, which will be found at page 83 of the respondent's case—"Now, when we put the question to ourselves, Is this an extract? I do not understand how it is to be doubted that it is. At the end of it, it says—'This is the just extract of valuation.' I do not know anything that has more faith in judgment than an extract by the proper keeper of a register. If it appeared that the person who signed it was not the keeper of the register at all, that would be another matter; but that is not suggested here. If he was the proper keeper of the register his extract must be taken *pro veritate*, and he here says it is a just extract. It is signed by a man who describes himself as the keeper of the register. And what does he describe the extract further to be? He says it is an extract of the valuation, and that it is taken from the principal register. That obviously means the Principal Register of the Commission of Teinds. In addition to that, we have on the back of the document 'Valuation of my Lord Arbuthnot's land within-mentioned.' In the case of the extract now before us, it is the valuation of other lands; but there is a similar indorsement upon it."

Now, my Lords, I really can add nothing to that. As regards the effect of the Act of 1707, I do not think it necessary to say more, because that Act must not at least go as far as this. It was stated by the Lord Advocate that he could not put the contention higher than this, as far as regards this particular argument, namely, that the same faith must be given to that document now in evidence from the register kept under the Act of 1707, as if we had Mr Murray's own signature here, and the thing which he signed. I think that in the absence of all other evidence we must, beyond all doubt, hold that the thing we have before us was signed by Thomas Murray; that Thomas Murray held the office which he is stated to have held; that he made the "just extract" which he says he made; and that the just extract was an extract from a record of something done, and not a mere idle note or something that was handed out to the heritor for no purpose whatever; but that the note so handed out could have had no other object or effect than to show the valuation which had been made by the Lords Commissioners of Teinds.

It appears to me, therefore, my Lords, that this appeal must fail, and must be dismissed, with costs.

Lord Westbury—My Lords, I cannot assent to the manner in which this case has been put in argument by the learned counsel for the appellant. They have required of your Lordships that you should try the question, whether this document, entitled "Valuation of the lands of Wester Barras" is to be regarded as an authentic extract of a decree of valuation of that time, and they contend that you are to try that without any conclusion or presumption being derived from the fact that the document in question was registered as such under the Act of 1707, more than 160 years ago. I say they require the House, without deriving any conclusion from that, to try the question now, as if the document were presented for registration under that statute. They say, that unless you find that it is an authentic extract of a decree it ought not to be considered as entitled to the benefit of the Act of 1707, and the privileges of the new register conferred by that statute.

Now, though I do not at all think it necessary that the judgment of your Lordships' House should rest upon the conclusion that I draw, yet I must undoubtedly insist upon this being accepted as the true ground, resulting from the fact of the registration under that statute, namely, that the statute affords a presumption *prima facie* until it be repelled, that the instrument so registered was a genuine and authentic extract, and that it was accepted as the extract of a decreet of valuation. Therefore that presumption would carry with it the conclusion unless it were repelled by some evidence on the part of the appellant.

Now, the argument of the appellant has consisted of nothing more than urging these considerations. You are told, my Lords, that on the face of the document it bears no Court—that it mentions no Court upon the face of it. They further say that, upon the face of it, it refers to no decree in terms, and therefore you cannot accept it as the extract of a decree. Now I have already spoken of the presumption that it is such which ought to be derived from the manner in which it has been dealt with. But putting that aside, that argument may be answered by the internal evidence afforded by the contents of the document itself. The document itself bears upon the face of it that it is an "extract of the valuation, as contained in the principal register thereof." Now substituting for the word "register" in order to avoid any confusion resulting from the English notion attached to that term, the words "record of proceedings—that is the original proceedings (made up into rolls if you please)—it would read "This is a just extract of the valuation of the aforesaid lands, as is contained in the principal record thereof." Record of what? Record of the valuation—what can be the meaning

of that but the record of the decree of valuation. That record is made with reference to the proceedings of the Commissioners, and the record of the proceedings of the Commissioners will be the record of the valuation made by the Commissioners, and the valuation made by the Commissioners would be embodied in the decree of the Commissioners.

Some little attempt was made to found upon the language used this further observation, that the words do not warrant the implication or presumption of its being a decree of the Superior Commissioners, and that it might be a decree of the Sub-Commissioners never affirmed. That conclusion cannot be drawn, for if it was a decree of the Sub-Commissioners never affirmed, there would have been no record made of it in the proper sense of that word in the Scotch meaning of the word "register:" Therefore we are bound to assume that it was a final proceeding, because it appears to have been recorded, and this document appears to be an extract from that record. All these things are fairly to be inferred from the language which is here used. One cannot but admire the *nimia activitas* with which these things are regarded in the Court below, for I can assure your Lordships that if this had arisen in an English court of justice it might have been made the subject of observations for five minutes, and at the end of that period of time it would have been finally decided. There is no doubt that this document ought to be accepted in the manner in which it has been accepted in the Court below, and that this appeal ought to be dismissed, with costs.

Lord Colonsay—My Lords, I have nothing to add to the opinion which has now been expressed by my two noble and learned friends. I will merely observe, that I think that the language of this document on page 15 comprehends everything that is necessary in Scotland to a valuation of teinds. These words are inconsistent with any other supposition being entertained. All that we find here is not to be accounted for except as the necessary result of a regular valuation. I will just make one other remark with reference to what has been said by my noble and learned friend who spoke last, as to the use of the word "register," to the effect that the word "register" is very often substituted in Scotland for the word "record." I would remark that in the Act of 1707, the word used is "record:" Therefore the inference which my noble and learned friend draws is perfectly correct.

Interlocutor affirmed, and appeal dismissed, with costs.

Agent for Appellant—Warren H. Sands, W.S., and Loch & Maclaurin, Westminster.

Agents for Respondents—W. & J. Cook, W.S., and Connell & Hope, Westminster.

Monday, July 11.

COMMISSIONERS OF SUPPLY FOR COUNTY OF LANARK *v.* NORTH BRITISH RAILWAY CO.

(*Ante*, vol. vi, p. 179.)

Assessment — Railway — Police-Rates—5 Geo. IV, c. 49—3 *and* 4 *Will. IV, c.* 114—5 *and* 6 *Will. IV, c.* 55. By a Railway Act it was provided that the grounds conveyed to the Company "shall not be liable for any duties or casualties to the superiors, nor for land-tax or any public or parish burden." *Held* (reversing decision of First Division, and in conformity with *Duncan* v. *S. N. E. Railway*, *ante*, p. 459) that the Railway Company were liable for police and prison rates in respect of the land conveyed to them for the purposes of their undertaking.

In 1867 the North British Railway Company raised an action of declarator against the Commissioners of Supply for the county of Lanark, seeking to have it declared that the Company was exempt from certain assessments made by the defenders upon the Company. The Act for making the Monkland and Kirkintilloch Railway, passed in 1825, provided "that the rights and titles to be granted in manner above mentioned to the said company of proprietors to the premises therein described shall not in any measure affect or diminish the right of the superiority of the same; but notwithstanding the said conveyances, the rights of superiority shall remain as before entire in the persons granting the said conveyances; and the grounds so conveyed to the said company of proprietors shall not be liable for any duties or casualties to the superiors, nor for land-tax nor any public or parish burden." The Act for making the Slamannan Railway, passed in 1835, also provided that the grounds should not be liable in payment of cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same should be paid by the original proprietors of such grounds. These railways now belonged to the North British Railway Company. Notwithstanding these exemptions, the Commissioners of Supply had made an assessment on the Railway Company for prison and county police purposes.

The Lord Ordinary held that the Company were exempt from these assessments, and the First Division adhered to his interlocutor.

The Commissioners appealed.

Sir R. Palmer, Q.C., and Mellish, Q.C., for them, argued—Since the judgment was delivered in the Court of Session in this case the House has decided the case of *Duncan* v. *The Scottish North-Eastern Railway Company*, and held that similar exemptions in old railway Acts were repealed by the General Poor-Law Act of 1845, and the present case is not substantially different from that case. It follows that the interlocutor in the present case must be reversed, for though the case of *Duncan* turned on the Poor-Law Act, and the present case turns on the Valuation and Prison Acts, still there are no differences in principle between these Acts, and the same rule must apply to both.

Lord Advocate and Anderson, Q.C., for the respondents, answered—The case of *Duncan* turned on peculiarities of the Poor-Law Act, which was held to have so entirely altered the mode of assessment as to amount to a new enactment and a new burden. But here the County Police and Valuation Acts were not intended to make any substantial difference in the mode of valuation, and not to alter the liability to assessment. The judgment, therefore, was right.

At advising—

Lord Chancellor—My Lords, in this case it appears to me that we are bound by the conclusion at which we have already arrived in the case of *Duncan* v. *The North Eastern Railway Company of Scotland*, for, so far as the case now before us differs