

Mr Maclean died upon 14th December 1889. He left a widow and four children, three daughters and one son, Alexander John Hew Maclean, who was in pupillarity, and who succeeded his father as heir of entail of the lands of Ardgour. In Mr Maclean's repositories was found a holograph will dated 29th November 1889. The first provision of this will was in these words, "I revoke all previous wills or testaments." He bequeathed to his successor in the entailed estate of Ardgour all the household furniture and farm plant, subject to the use during her life or widowhood by his wife of such portions as she might desire. "(4) I bequeath the rest of my property, where-soever and whatsoever, to my said wife for her use as to the interest or income thereof during her life or widowhood." The value of the moveable estate left by Mr Maclean amounted to about £15,000, as specified in a schedule attached to the deed.

This special case was presented by (1) the heir of entail and his tutors and curators, and (2) Mrs Maclean, for the opinion of the Court on this question—"Does the holograph will dated 29th November 1889 revoke the bond of annuity dated 16th July 1881?"

The first party argued—The annuity was a testamentary writing which was revoked by the subsequent holograph writing. It might be difficult to have said what was the meaning of the words the testator used, but that he intended to recal this annuity appeared from two considerations—(1) the provision in the deed that it was to be accepted in lieu of terce made it a writing of a testamentary character; (2) because by the trust-disposition and settlement of 19th August 1882 the truster had revoked all previous "settlements and writings of a testamentary character," but he expressly excepted this annuity, showing that he considered it was a writing of a testamentary character, and if he had wished his widow to take anything under the bond of annuity as well as what she took under the holograph will he would have excepted it in that deed also.

Counsel for the second party were not called on.

At advising—

LORD JUSTICE-CLERK—I doubt if it is quite legitimate for us to look at the words in the previous deed as a glossary of the words in the holograph will. Taking the words in the holograph will, however, as they stand, "I revoke all previous wills or testaments," I think it cannot be said that they revoke this bond of annuity. I think there is nothing in them to lead to that conclusion. The revocation is one only of testamentary writings, and this bond cannot be said to be within that category although there were some words in it of a testamentary character, but I think it is not a testamentary deed in the ordinary meaning of that term. I therefore think we should answer the question in the negative.

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LORD YOUNG—I am of the same opinion. I am not going into the question, but I wish to guard myself against being thought to have any decided opinion. I have none as to whether it is proper for us to examine the words in the first will and use them as a glossary to explain the second. I see two difficulties. In the first place, there is no ambiguity in the language of the deed, and it is generally only where there is some ambiguity in the words that we look to extrinsic evidence. Then again, referring to a will or deed which has been prepared by a professional man, and which has been revoked, as a glossary of words used in a later deed may be doubtful enough. But I do not express any opinion, because I do not think they afford any ground for putting another construction on the words than they would otherwise bear.

LORD RUTHERFURD CLARK—I am quite clear that the bond of annuity was not revoked.

LORD TRAYNER concurred.

The Court answered the question in the negative.

Counsel for the First Parties—Ure—E. F. Macpherson.

Counsel for the Second Party—Salvesen—C. K. Mackenzie. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, May 21.

## SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

### MACLEOD'S TRUSTEES v. MURRAY.

*Title to Sue—Annuity of Victual out of Lands—Adjudication—Admission that Debt Paid.*

Certain lands were burdened with an annuity of victual in 1666. In 1698 the annuity was adjudged in security of a debt due by the person in right of said annuity. The adjudger and his representatives continued to draw the annuity till 1888, when the owner of the lands burdened refused to continue payment. In an action at the instance of the adjudger's representatives to enforce payment, it was admitted by joint-minute that the pursuers had received from the said annuity sums more than sufficient to pay off the debt, principal and interest.

*Held* that the annuity being validly constituted upon the lands, the owners of the lands had no right to refuse payment, the representatives of the reverser being the only persons having an interest to dispute the pursuers' claim.

*Title—Instrument of Sasine—Necessity of Signature of Witnesses and of Notary's Motto—What Symbols Necessary to Valid Sasine in Annuity of Victual—Adjudi-*

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*cation—Construction of Decree of Adjudication where Extract not Conform to Interlocutor—Ranking and Sale—Effect of Decree of Ranking and Sale in Clearing Lands of Heritable Annuity.*

See opinion of Lord Kyllachy (Ordinary) on these points (*infra*) acquiesced in in the Inner House.

By disposition dated 24th April 1666 and recorded 14th July 1697, James Fraser, Esquire, of Pitcalzean, Ross-shire, in consideration of exemption from multures, thirlage, and other duties and services prestatable in respect of the Mill of Morvich, disposed to Sir George Mackenzie of Tarbet, the proprietor of said mill, and his heirs and assignees, a yearly annuity of 40 bolls victual furth of said lands (or of 28 bolls victual in case the debtor should pay 12 bolls to the Bishop of Ross, superior of the said mill). Sir George Mackenzie was vested in the said annuity by virtue of an instrument of sasine dated 21st May and duly recorded 29th May 1666, and disposed the same by deed of sale dated 17th May 1673 and recorded 5th April 1676 to Sir John Urquhart of Cromarty, who was infeft under an instrument of sasine dated 17th and 18th and registered 24th December 1673.

By decree of adjudication directed against James Urquhart, son and heir of Jonathan Urquhart, son and heir of the said Sir John Urquhart, dated 17th February 1698, with abbreviate recorded 24th April 1698, Roderick Mackenzie of Prestonhall adjudged, *inter alia*, the said annuity in security for a debt due by the said Sir John Urquhart under a personal bond dated 1669 in favour of the Earl of Balcarres and assigned to him in 1677, and in 1699 he assigned the debt (but not the decree) to Roderick Macleod, Esquire, of Cadboll, to whom his son and heir Alexander Mackenzie assigned the decree of adjudication in 1725.

Roderick Macleod's great grandson and heir was Robert Bruce Aeneas Macleod of Cadboll, who completed a title to the said annuity, the right to which had remained personal since 1673, and was infeft therein conform to a notarial instrument in his favour expedite in terms of the Titles to Land Consolidation (Scotland) Act 1868 and recorded 15th February 1869, and died on 5th April 1888 leaving a general trust-disposition and settlement in favour of certain trustees.

The lands of Pitcalzean, which were burdened with this annuity, were brought to a judicial sale in 1723, and decree of sale and adjudication in favour of the purchaser Alexander Fraser was pronounced on 18th November 1729. In said process interlocutors were pronounced for the production of claims by creditors under certification, but the person having right to said annuity was not called nor was the annuity entered among the burdens affecting the lands. In 1882 William Hugh Eric Murray of Geanies in the county of Ross succeeded to the estate of Pitcalzean, and after Macleod of Cadboll's death in 1888 refused to continue the payment of said annuity.

Thereupon Macleod of Cadboll's trustees brought a petitory action against the said W. H. E. Murray for payment of said annuity.

The defender stated certain objections to the pursuers' title, the nature of which sufficiently appears from the Lord Ordinary's opinion. He also stated that "upon payment of the price by the said Alexander Fraser, the purchaser as aforesaid, the said lands and others so purchased and acquired by him were effectually disburdened of all debts or deeds of the bankrupts, and the present pursuers, and all others claiming through the said bankrupts, were excluded from troubling or claiming against the purchaser and his successors in terms of the Statutes 1681, c. 17, and 1695, c. 6, and Act of Sederunt, 23rd November 1711, and said decree. The said Alexander Fraser, purchaser aforesaid, assigned his right in said decree in competent form to the Reverend James Fraser, minister of the church at Alnes, who duly completed a feudal title to the said lands and others by Crown charter of resignation and adjudication, dated 28th July, and written to the Seal, and registered 21st September, both in the year 1732, and instrument of sasines following thereon dated 3rd October and recorded in the particular Register of Sasines for the counties of Inverness, Ross, &c., 25th November 1732. The said title is not burdened with any annuity of victual or otherwise in favour of the pursuers or their authors. The said lands and others, which now belong to the defender as aforesaid, have been possessed by the said purchaser and his feudal successors upon said title uninterruptedly ever since. Prescription had thus run upon said title in the year 1772, and since that time an unbroken succession of complete feudal titles through a series of singular successors has come down to the defender."

The pursuers pleaded *inter alia*—" (3) The defences are irrelevant."

The defender pleaded—" (1) No title to sue. (2) The debt for which the pretended adjudication of 1698 was led, having been long ago paid up and extinguished by intromissions and otherwise, the pursuers, at common law, and in terms of the Act, 1621, c. 6, have no interest to sue. (4) Any right which Roderick Mackenzie, one of the pursuers' authors, could allege under the decree of adjudication of 1698, was only for payment of the sum due under the personal bond of 1669; and all action competent thereon was barred after 1738, under the Acts 1469 c. 29, 1474, c. 55, and 1617, c. 12."

The following joint-minute was lodged—"DUNDAS for the pursuers, GUTHRIE for the defender, for the purposes of this case, and without prejudice to their respective rights and pleas in any other action or proceeding or otherwise, and under reservation of all the pleas-in-law competent to them respectively, concurred in stating that the parties craved the Lord Ordinary to decide the case on the footing (1) that the annuity in dispute was in point of fact regularly drawn by the predecessors in

title of the pursuers, and paid to them by the proprietors of the estate of Pitcalzean, at all events from the year 1698 down to the year 1888, and (2) that the pursuers' predecessors in title in point of fact uplifted and received subsequent to the date of the adjudication in 1698, out of the two annuities mentioned on record (as payable out of the lands of Kindeace and Pitcalzean respectively), sums of money more than sufficient to extinguish and pay off the principal sums contained in the said decree of adjudication dated 17th February 1698, with interest thereon and expenses."

The defender also brought an action against Macleod's trustees for reduction of the said notarial instrument of 1869, and whole grounds and warrants thereof.

By interlocutor dated 3rd December 1890 the Lord Ordinary (KYLACHY) pronounced decree in favour of Macleod's trustees, the pursuers in the petitory action and defenders in the reduction.

"*Opinion.*—The question in these actions is whether the pursuer Mr Macleod of Cadboll has right to continued payment of an annuity of 40 bolls victual from the lands of Pitcalzean belonging to the defender Mr Murray of Geanies. The annuity has been levied without objection, at all events since 1698, or rather it was so levied until the year 1888, when payment was for the first time refused. But the defender now seeks to establish upon an elaborate examination of the pursuer's titles that the pursuer has no valid infeftment in the annuity, and that he is unable to connect himself with any such valid infeftment. There are two actions before the Court. The one is a petitory action at the instance of the pursuer. The other is an action of reduction at the instance of the defender, whereby he seeks to reduce a notarial instrument dated in 1869, whereby the pursuer's father—whose title and that of his authors had remained personal from 1673—sought to connect himself with a sasine expedite in the latter year, and to take infeftment in the annuity according to the forms of the Titles to Land Act of 1868.

"I do not propose to consider the defender's objections so far as they are directed to the validity of the notarial instrument of 1869. The objections to that instrument—apart from those directed to its warrants—are highly critical, and I cannot say that they strike me as conclusive. But if the pursuer is able to show that he has a personal title to the annuity as a subject well originally feudalised, I fail to see what interest the defender has to criticise the form of his infeftment, or to require from the Court a judgment in matters which do not affect the substantial rights of parties. It would of course have been different if the annuity had been levied for the full prescriptive period after 1869. In that case the pursuer would—on the assumption that the notarial instrument of that year was valid—have had a prescriptive title which would have foreclosed further inquiry; and in that view it would of course have been necessary for the defender

to cut down the notarial instrument, and he would have had a material interest to do so. But the payment of the annuity having stopped as above mentioned in 1888 no question of that sort can arise.

"The questions really requiring to be solved are—(1) Whether the grant of the annuity was originally well feudalised so as to be effectual against singular successors? (2) Whether the pursuer can connect himself with the grant so feudalised? and (3) Whether the defender's lands, viz., his lands of Pitcalzean, have been in any way disburdened of the annuity. I shall deal with those questions in their order.

"I. *As to the feudalisation of the grant.*—The pursuer founds on two sasines, both duly recorded, and of which extracts in common form are produced. (1) The sasine following on the original grant, dated in 1666, and contained in a disposition by James Fraser, then proprietor of Pitcalzean, in favour of Sir George Mackenzie of Tarbet. (2) The sasine before referred to dated in 1673, and following on a contract and disposition by Sir George Mackenzie of Tarbet, in favour of Sir John Urquhart of Cromarty. The question is whether either or both of those sasines is open to objection as constituting a valid infeftment in this annuity.

"The objections stated to the sasine of 1666 are (1) that the extract sasine does not bear the notary's motto; and (2) that it does not bear the signatures of the witnesses. It appears to me that neither of those objections is well founded. It has indeed been decided that the want of the motto is not essential, or at all events that its absence from the sasine—or rather from the extract—cannot be made a ground of challenge at least after a lapse of time—*Urquhart*, 1 Pat. App. 302. And with respect to the signatures of the witnesses, it seems conclusive that this sasine is prior in date to the Act 1681, cap. 5, which for the first time made subscription by witnesses essential. Indeed, though stated on record, this latter objection was not in the end pressed. I may add with respect to omissions in such extracts generally, that it is well known that there was very considerable looseness in the practice of recording writs during the 17th century, and indeed down as far as the year 1756—See Professor Menzies' chapter on this subject, p. 583, *et seq.*

"To the other sasine—that of 1673—there is the same objection, viz., that the instrument does not set forth the subscription of the witnesses. But it is further urged that justly construed this sasine does not bear that infeftment was given in the annuity, but only in the lands of Pitcalzean, out of which the annuity was payable. And in connection with this the further objection is also taken, that both in the precept of sasine and in the sasine itself the symbol prescribed and employed was not the appropriate symbol for such an annuity, viz., a sheaf of corn, but only earth and stone, the appropriate symbol for the lands themselves.

"I cannot say that I think either of these

points serious. The precept directs sasine to be given in, *inter alia*, the annuity. And the instrument bears that sasine was so given, and although it may be the fair construction both of the precept and of the instrument that the mode in which sasine was so given was by proceeding to the lands of Pitcalzean, and there delivering earth and stone of the lands in the presence of the witnesses, I am not able to hold—especially at this distance of time, and after 200 years' possession—that this made a bad infeftment. There was and is no statutory rule as to symbols, and even in Erskine's time the practice with respect to the symbols for annual rents seems to have been far from fixed—Ersk. ii. 3, 36; Ross' Lect. 2, 375; *Dempster v. Kinlock*, M. 14, 313. No case was quoted in which a sasine had been held null on the ground now suggested, and Lord Kilkerran's report of the case of *Dempster* appears to show that the Court had at least on some occasions sustained sasines upon rights of annual rent where the only symbol employed was that appropriate to the subject out of which the annual rent was due.

"I therefore hold that the annuity was well feudalised as an annual payment exigible from the defender's lands, and in particular that Sir John Urquhart was well infeft in it by the duly recorded sasine of 1673.

"II. The next question is as to the transmissions of the right from Sir John Urquhart to the pursuer's family. The course of these transmissions was as follows:—

"Sir John Urquhart seems in the year 1669 to have granted along with certain other persons a personal bond in favour of the Earl of Balcarres, and this bond was in 1677 assigned to Roderick Mackenzie of Prestonhall, who in 1698 adjudged in security of Sir John Urquhart's share of the debt various lands and other subjects, including the annuity now in question. The adjudication was directed against Sir John Urquhart's grandson James Urquhart, against whom representation was duly constituted by letters of general charge, and who, after decree of constitution had passed in common form, was charged by letters of special charge to enter heir to his grandfather in, *inter alia*, the said annuity. The annuity being thus adjudged from the Urquhart family to Mackenzie of Prestonhall, was by him and his son and heir-at-law, by two deeds executed in 1699 and 1725, assigned to the pursuer's great-great-grandfather Æneas Macleod of Cadboll, from whom it has been transmitted by a regular series of services to the present pursuer.

"The objection taken by the defender to this progress of titles are, as I understand their argument, four in number.

"*First.* It is said that the adjudication of 1698 was inept inasmuch as it proceeded on letters of special charge, and thereby assumed that Sir John Urquhart was validly infeft, whereas in fact the infeftment in his favour—that of 1673—was, for the reasons above mentioned, invalid. It is unnecessary to consider this objection

further, because I have already held that Sir John Urquhart's infeftment of 1673 was valid.

"*Second.* It is said next that the extract decree of adjudication was so expressed as not to convey the annuity at all, but only certain lands, including the lands of Pitcalzean, 'and all reversions of the same.' This objection has on the face of the extract some force. It is clear enough on the face of the extract that the adjudication of the annuity was concluded for in the summons, and that the defender was charged to enter heir in the annuity, but it is also certain that by some curious error the annuity is omitted from the operative decerniture. And on this the defender founds.

"It appears, however, on examination of the process at the Register House, that the interlocutor of the Court, which was written, as was usual in those days, on the summons, is a decree in absence in terms of the summons, and as the extract may still be corrected on application to the Court, or a new and correct extract obtained from the extractor, I fail to see how the error in the existing extract can help the defender. It is true that in the will of the summons, or rather in the certification which it contains, there is an omission to refer to the annuity similar to the omission in the decerniture. It is also true that in the summons itself Roderick Mackenzie is described as 'Roderick of Prestonhall, advocate.' But I cannot say that these appear to me to be omissions or errors of a fatal character. On the whole, therefore, I find no sufficient reason for setting aside or refusing effect to the decree of adjudication.

"*Third.* The third objection is this, that in assigning the adjudication to Cadboll, Roderick Mackenzie, the adjudger, by some mistake assigned the adjudication itself, and that the adjudication was subsequently assigned by his son and heir who granted a second assignation narrating the mistake which had been committed. The defender's argument was that this second assignation was inept, the adjudication having no existence apart from the debt, and the debt having been already conveyed away by the earlier deed. It appears to me, however, that all this is mere subtlety, and has no substance.

"*Fourth.* A more serious question is, however, raised with respect to the subsistence of the adjudication title in the person of the Mackenzies of Prestonhall and their assignees. It is admitted by joint-minute that Sir John Urquhart's debt to the Mackenzies, on which the adjudication proceeded, has long ago been extinguished by the annuities drawn from year to year, and the defender argued that that being so, the annuity is now disburdened of the debt, and that the title to draw it has long ago reverted to the Urquharts of Cromarty. It is not said, it will be observed, that there has been any declarator of expiry of the legal, and there being no infeftment, there has, of course, been no room for the positive prescription. On the other hand, it is the fact

that the Urquharts of Cromarty have brought no declarator of redemption, nor have they taken any step to challenge the pursuer's title, or to interpell the tenants of the lands adjudged, or the defender as debtor in the annuity adjudged, from continuing to pay to the adjudgers.

"I am of opinion that in the circumstances the defender has no title to plead the alleged discharge of the debt and redemption of the annuity. Such redemption is only competent to the reverser and his heirs, and while they choose to stand aside the adjudger's title in my opinion subsists, and he is entitled to continue in possession. It may be that if heirs of the Urquharts of Cromarty still exist, the pursuer is bound to count and reckon with them, but I do not see that he can be asked to count and reckon with the defender, who is undoubtedly due the annual payments, and in a question with whom the redeemable character of the adjudger's title seems unimportant. I do not overlook that the adjudger's title is still personal—no infeftment having followed upon the adjudication prior to the notarial instrument of 1869 which is now challenged. But this circumstance does not appear to me to affect the question of the defender's title to plead the discharge of the debt and the redemption of the annuity.

"III. It only remains to consider whether the defender is right in his contention that the lands of Pitcalzean having been brought to judicial sale in the year 1723, and purchased at such sale by the defender's authors, and the decree of sale making no mention of the annuity, the lands of Pitcalzean were thereby disburdened of this annual payment.

"On this question I heard a good deal of argument mainly directed to this point, whether an annuity of this sort was of the class of debts and deeds of the bankrupt or his predecessors of which the purchaser was by the decree of sale freed and discharged. It was on the one hand contended that the annuity was in the same position as any other heritable debt, and that its source and origin were immaterial. It was argued on the other hand that the annuity was not of the class of debts which fell to be discharged out of the price—that it was a burden more analogous to a feu-duty or ground-annual, and that in fact, as appeared from the original grant, it was simply an annual payment in commutation of thirlage.

"I have not found it necessary to decide the question thus raised, because there is another ground on which the pursuer relied as excluding the effect of the decree of sale, and which appears to me to be conclusive. I refer to the fact that none of the defender's predecessors in title were called as parties to the ranking and sale. I think it must be held as settled that a decree of sale forms no protection to a purchaser against persons having titles preferable to that of the bankrupt who have not been called in the action, or against creditors having real rights in the lands who

have not been specially cited as defenders, in terms of the original Act 1681, c. 17. I do not know that the latter point was ever doubted. The former point—I mean that as to the position of persons having preferable titles—was the subject at one time of some conflict of decision, but it must now be taken as settled by, *inter alia*, the decision of the House of Lords in the case of *Urquhart* before referred to. (See on this whole subject *Ersk. ii. 12, 62, et seq.*; *Bell's Comm. 2, 258; Urquhart, M. 9919, 1 Pat. App. p. 302.*)

"On the whole, therefore, I consider that I must also repel this objection to the pursuer's title, and as there is now (looking to the admission that the annuity has been drawn from the defender's lands of Pitcalzean since 1698) no question as to the identification of the lands burdened with the annuity, I see no reason why I should not grant the pursuer decree in terms of his summons, and in the defender's action dismiss the conclusion for reduction of the notarial instrument of 1869, and assoilzie the defender from the remaining conclusions of the summons."

The defender in the petitory action reclaimed, but confined his argument to the plea of no title to sue.

Argued for him—There was now a judicial admission by the pursuers that their debt had been more than satisfied out of the annuity in question. They had therefore no longer any title to sue for such annuity. The defender could not be safe to pay to them as they could not grant a valid discharge.

Argued for respondents—The defender's lands being validly burdened, he was bound to pay the annuity to some one, and had really no interest in defending this action. It was *jus tertii* to him whether the debt on account of which the decree of adjudication had been pronounced had been paid or not. He was quite safe to pay to the pursuers, who had an *ex facie* good title. Indeed, they had a perpetual title against everyone unless possibly the representatives of the reverser. The admission made in the joint-minute was only to avoid a possible proof before answer in this action. The pursuers still maintained the defences were irrelevant.

At advising—

LORD TRAYNER—In the first of these actions the pursuers conclude against the defender for payment of a certain sum of money as the equivalent for 40 bolls of victual, or otherwise for delivery of the victual itself. Several defences are stated by the defender on record—all of which have been repelled by the Lord Ordinary—but the only defences maintained before us were those set forth in the defender's first and second pleas-in-law. The first plea depends upon the second. It is unnecessary to go into any detail regarding the pursuer's title, because that has been very fully done by the Lord Ordinary, but the state of the pursuer's title to the victual in question, or its equivalent in money,

may be stated shortly as follows—In 1666 the lands of Pitcalzean (of which the defender is now proprietor) were validly burdened and charged with payment of a yearly annuity of 40 bolls of victual, and the right to exact the annuity stood vested in 1673 in Sir John Urquhart of Cromarty. This right was adjudged in 1698 by Mackenzie of Prestonhall in respect of a debt of £500, then due to him by Sir John Urquhart, and the pursuers are now in right of the decree of adjudication.

It is maintained by the defender that the pursuers have no title to sue this action, because the debt for which the adjudication was led has been paid. This fact is not established, but a minute of admissions has been lodged by which the pursuers admit that for the purposes of this case it may be so held and the case decided upon that footing. I am of opinion that even upon such an admission the defence now urged cannot be sustained. Whether that debt has been paid or not is a matter with which the defender has no concern. His obligation to pay the 40 bolls of victual is an existing obligation which he must discharge, and there must be some creditor in that obligation. *Ex facie* of their titles the pursuers are the creditors entitled to enforce and to discharge that obligation. So far as the defender is concerned the pursuers' right to enforce payment of the victual payable out of the defender's lands stands upon an absolute title, although in a question with the representatives of Urquhart of Cromarty that title is redeemable. The defender has no right to state or maintain pleas which are personal to Urquhart's representative, and the pursuers are entitled to decline discussing any such pleas with him.

For this reason, in my opinion, the pursuers, while admitting for the purposes of this case (in order to save time and expense in investigating that matter) that the debt for which an adjudication was led has been paid, have admitted nothing from which the defender can take any benefit. The pursuers on their present title are the creditors, and only creditors, in the defender's obligation, and to their demand for payment it seems to me the defender has no answer. I am therefore of opinion that the judgment of the Lord Ordinary should be affirmed. In form, however, the Lord Ordinary's interlocutor will require to be recalled, as he has decreed "conform to the conclusions of the summons," omitting to notice that those conclusions are alternative, and decree should now be pronounced in terms of the first conclusion of the summons.

In the second action, which is at the instance of Mr Murray, concluding for a reduction of his opponents' title, or declarator that they are not entitled to demand payment of the 40 bolls of victual, the Lord Ordinary's interlocutor will fall to be affirmed. Nothing was said in support of the reclaiming-note against that judgment.

THE LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for Macleod's Trustees — D.-F. Balfour, Q.C. — Dundas. Agents — Mackenzie & Black, W.S.

Counsel for Murray—Graham Murray—Guthrie. Agents—Macandrew, Wright, & Murray, W.S.

Thursday, May 28.

## FIRST DIVISION.

[Lord Kinnear, Ordinary.]

### THE ABERDEEN JOINT PASSENGER STATION COMMITTEE AND THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY v. THE NORTH BRITISH RAILWAY COMPANY.

(*Ante*, June 19, 1890, vol. xxvii. p. 1004, 17 R. 975.)

#### Railway—Station—Use of Joint-Station.

The Great North of Scotland Railway Company and the Caledonian Railway Company (the successor of the Scottish North-Eastern Railway Company) were joint-possessors of a passenger station at Aberdeen, the management of which was vested in a joint-committee representative of the two companies.

The Caledonian and North-Eastern Amalgamation Act 1866, which sought to promote the free passage of East Coast traffic between Aberdeen and the South, secured to the North British Railway Company certain "conveniences and privileges" over the lines now possessed by the Caledonian Railway Company, including "the joint or separate use of the offices, stations, sidings, and other accommodation at the several stations . . . of the Scottish North-Eastern lines, including in so far as the" (Caledonian) "company lawfully may," the station referred to. Since 1878 the North British Railway Company had exercised running powers for passenger and goods trains over a portion of the North-Eastern lines from the neighbourhood of Montrose to Aberdeen, and they had been provided with accommodation in the joint-station into which they had been allowed to run their passenger trains.

The joint-committee and the Great North of Scotland Railway Company sought declarator that the North British Railway Company were not entitled without the consent of the Great North of Scotland Railway Company to use the joint-station and the railway through the same, and that the joint-committee were not bound to admit the defenders' traffic into the station.