

LORD CHELMSFORD.—Would the North British Railway Company have been here at all upon their appeal, without your concurrence to their appealing in the first action?

Solicitor General.—Yes, my Lord, that matter stands in this way: They applied to the Court for leave to appeal, and that application was quite an independent one of their own.

LORD CHELMSFORD.—That elapsed by time, they could not have proceeded but with your concurrence.

Solicitor General.—Then, with your Lordship's permission, what took place after that was merely this: We did all we could, which turns out to have been nothing, to put them in the situation in which they would have been, if they had not lost the time.

LORD CHELMSFORD.—You intended to place them in a position in which they could appeal in the first case. Without that they would not have done it on account of lapse of time. The time had gone by for appealing, and you said, We will facilitate your object of appealing in the first cause by appealing ourselves. So that, according to your expression, practically speaking, the two cases are now before the House as one upon the whole matter.

Mr. Anderson.—In their petition of appeal, they state, that it is desirable for both parties, that the two actions should be before your Lordships' House together for discussion.

Solicitor General.—I entirely agree in that, but what I wish your Lordships to understand is, that we did not put them in motion to appeal in the second action in which they have the power of appealing. They did not, in the first instance, make their proposal to appeal in the second action conditional upon any appeal in the first. They went in the ordinary way to the Court, who might have granted, notwithstanding our opposition, leave to appeal in the second action. If we had not opposed, they would have got the leave in the ordinary way, and your Lordships would have had the appeal in the second action by itself, but we appeared and opposed—our opposition, of course, not being at all binding upon the Court, and we said, that if they would appeal from the interlocutors in the first action also, we would not oppose their having leave to appeal in the second action. All that followed was in consequence of that; but if their original application had been granted *simpliciter*, they then would have been in the situation of being appellants in the second action only, and not in the first. They did not, in the first instance, of themselves propose to appeal in the first action. If we can only elicit from your Lordships any expression of opinion as to what is the course that we ought to follow, and the action that we should go on with—

LORD CHANCELLOR.—I should be extremely sorry that you should do so.

LORD CHELMSFORD.—And so should I.

Solicitor General.—The result will be, that we shall have a separate accounting in both actions, and be exposed to great inconvenience and uncertainty.

LORD CHANCELLOR.—My Lords, I submit to your Lordships, that, under the circumstances which have been so much discussed, and which are perfectly well known to your Lordships, it may be desirable to abstain from saying more upon this matter than this, that these appeals, being incompetent by consent of the parties, the appeals should be dismissed without costs and without prejudice.

Dismissed without prejudice to either party.

For North British Railway, Alexander Dobie, Solicitor, London.—For Mr. Wauchope, Loch and Maclaurin, Solicitors, Westminster.

MAY 15, 1862.

ARCHIBALD BUCHANAN, *Appellant*, v. ALEXANDER ANGUS and D. SIMPSON,
Respondents.

Heritable and Movable—Trust—Succession—Vesting—Clause—Conversion—*A trust deed conveyed the truster's whole property, real and personal, to trustees, and it directed them to "pay over" the residue or price thereof to a brother and sister equally, who both survived the testator, with power if necessary to convert the same into money.*

HELD (reversing judgment), *That as the trustees were not bound to sell, the jus crediti of the brother in the heritable estate was heritable, and did not pass to his sister as next of kin.*¹

¹ See previous report 22 D. 979; 32 Sc. Jur. 418. S. C. 4 Macq. Ap. 374; 34 Sc. Jur. 502.

This was an appeal against certain interlocutors of the Court of Session in an action of reduction and declarator at the instance of the appellant and his sisters against the trustees and executors nominated by the late Mrs. Margaret Smith or Heugh, in a *mortis causâ* settlement, and, for their interest, against the legatees under that deed and a relative codicil. The action was of a twofold character. The reductive conclusion was for setting aside the deed of settlement and relative codicil, on the ground of facility, fraud, and circumvention, and was prosecuted by the appellant as the heir in heritage of Mrs. Heugh, and by the appellant and his sisters as being her nearest of kin, and her heirs *in mobilibus*. In that branch of the action the appellant and his sisters were unsuccessful, but the judgments pronounced therein were not sought to be disturbed by the appeal. The declaratory conclusion was to have it declared, that the one half of the heritable estate of the late John Smith, a brother of Mrs. Heugh, and which by his trust settlement he had destined to his brother, Archibald Smith, and the heirs and assignees of Archibald, had never vested in Mrs. Heugh, who survived both her brothers, but, upon her death, belonged to the appellant as the heir of Archibald Smith. This branch of the action was prosecuted by the appellant exclusively, his sisters having no interest therein. It was against the interlocutors pronounced in this latter branch of the action, that the present appeal was presented.

The pursuer in his *printed case* supported the appeal on the ground, that the beneficial interest of Major Archibald Smith in the heritable estate of John Smith was heritable, and upon his death did not pass as movable estate under the confirmation expedite by Mrs. Heugh, but belonged to the appellant, under his service, as Major Smith's heir.

The respondents supported the judgment in their case on the following grounds:—1. Because, by the terms of the trust deed and settlement of John Smith, no right was given to either of his residuary legatees to demand from his trustees any specific heritable subject, but merely a right to payment of one half of the general residue of his estate. 2. The right conferred on Mrs. Heugh and Major Smith in the residue of John Smith's estate was movable or personal, because the sale and realization of John Smith's estate was absolutely necessary for the fulfilment of the purposes of the trust. 3. The right conferred on Major Archibald Smith under John Smith's trust deed was movable or personal, because, by a series of decisions in the Supreme Court, such rights have been adjudged to be movable and personal.—Bell's Principles, 4th ed. § 1482; *Grierson v. Ramsay*, M. 759; and Hailes, p. 855; *Advocate General v. Ramsay's Trustees*, reported in a Note to *Evans*, 2 C. M. & R. 224; *Attorney General v. Mangles*, 5 M. & W. 120; *Wilson v. Smart*, 31st May 1809, F.C.; *Dick v. Gillies*, 6 S. 1065; *Att. Gen. v. Simcox*, 1 Exch. 749; *Att. Gen. v. Metcalf*, 6 Exch. 43.

Anderson Q.C., and *Neish*, for the appellant.—The beneficial interest of Major Smith in the truster's heritable estate was heritable, and not movable. In order to see which it is, the deed must be construed in the ordinary way, and it must be seen whether there was any conversion, actual or constructive, of the heritable estate into movable estate. This is a question of intention, and is solved in precisely the same way both in the law of England and Scotland. The simple test is, whether there was an imperative direction to the trustees to convert the heritable estate, or merely a discretionary power which has not been exercised. The English authorities are collected in *Fletcher v. Ashburnham*, Tudor L.C. 674 (2d ed.), and in Lewin on Trusts, 621 (last ed.). The Scotch authorities are to the same effect—*Durie v. Coutts*, M. 4624; *Burrell v. Burrell*, 4 S. 314; *Cathcart v. Cathcart*, 8 S. 803; *Ramsay v. White*, 11 S. 786; *Patrick v. Nichol*, 1 D. 207; *Finney v. Lords of the Treasury*, 15 S. 165; *Angus v. Angus*, 4 S. 279; *Strachan v. Mowbray*, 5 D. 688; *Advocate General v. Blackburn's Trustees*, 10 D. 166; *Advocate General v. Williamson*, 2 Bell, Ap. C. 89; *Advocate General v. Smith*, 14 D. 585; 1 Macq. App. 760, *ante*, vol. i. p. 379; *Pearson v. Ogilvie*, 20 D. 105. All the cases more or less distinctly recognize the above mentioned leading principle. Applying this principle to the present case, the words of the direction in the trust deed are to lease the heritable property, or, if necessary, to convert the same into money. This obviously amounts to a discretion in the trustees; and they were not bound in all events to convert. Nor did they, in fact, exercise this discretionary power, so that, in the result, it is precisely the same as if no power to convert had been given at all. For all that the deed contains, the trustees might have satisfied it by conveying the heritage to the two beneficiaries as joint proprietors, and the beneficiaries might have called on the trustees to do so. Since, therefore, the heritable estate has never been converted, it follows, that that estate now belongs to the appellant as heir at law of Major Smith, since it never became vested in Mrs. Heugh as next of kin.

Lord Advocate (Moncreiff), and *Rolt Q.C.*, for the respondents.—The judgment of the Court below was right. There was here no right given to the beneficiaries to demand a conveyance of the specific heritable estate. What was directed was a payment of the residue. This implied, that the heritable estate was to be converted. But, at all events, the right of Major Smith to this heritable estate, being a *jus crediti*, was vested in Mrs. Heugh, for certain real rights pass to heirs without service, and one of these has always been held to be a *jus crediti* under a trust disposition. This was a mere personal right to land, or a right of action. It was a right to

demand only the general residue; and, accordingly, is movable, and descends to executors—Bell's Pr. § 1482.

[LORD CHANCELLOR.—Might not Major Smith and Mrs. Heugh have said to the trustees, “you shall not sell”?]]

We think not. No doubt it is a question of intention; but the fair construction is, that the trustees could not have called on the beneficiaries to take a *pro indiviso* right to the land. The will substantially directs the conversion; and a conveyance in specie would not satisfy it. The material word is to pay over the residue; and, *primâ facie*, the word “pay” implies a conversion into money. It is therefore no answer to say, that Mrs. Heugh never took up this *jus crediti* of Major Smith, and so, that it never vested in her, for, she being also heir at law, service is not necessary to vest such a right—*Per* Lord President (Campbell) in *Veitch v. Young*, M. Appx. No. 4, “Service and Confirmation;” *Russell v. Macdowall*, 6th February 1824, F.C.

[LORD CHANCELLOR.—You say this *jus crediti* vested in the heir at law of Major Smith as part of his *hæreditas jacens*, and needed no service, either for the purpose of enjoyment or transmission.]]

Yes. A *jus crediti* needs no service; and leases are another example of a heritable right which vests without service. Therefore, as everything that vested in Mrs. Heugh was conveyed by her trust disposition, the appellant has no right to this heritable estate.

Anderson replied.

[LORD CHANCELLOR.—We will not trouble you to reply as to the first point, whether this was a conversion; but you can address yourself to the other point, whether this *jus crediti* passed as part of the *hæreditas jacens* of Major Smith to Mrs. Heugh without service.]]

That was a point never raised in the Court below. The Lord President treats it as quite immaterial; and if there had been anything in it, the Judges would not have failed to notice it. It is trite law in Scotland, that all heritable rights, which in themselves require infeftment, require service to vest them in the heir, where they descend to the heir by virtue of his relationship. It is true a *jus crediti* under a marriage contract requires no service; but that is because the heir takes not as heir, but as purchaser. So in the case of leases, they require no service, because they require no infeftment—See *Menzies' Conv.* 761; *Ersk.* iii. 8, 63; iii. 8, 73. There is no authority in the law of Scotland, that a personal title to feudal subjects may be taken up by the heir without a general service—*Carmichael v. Carmichael*, 15th November 1810, F.C.

LORD CHANCELLOR WESTBURY.—My Lords, in order to render the opinions which I have to offer to your Lordships in this case intelligible, it may be necessary for me concisely to make a statement of the facts of the case. The question in dispute between the parties arises on a trust disposition and settlement of a gentleman of the name of John Smith. By that trust disposition and settlement he vested his heritable and movable estate in trustees; and after directing them to pay his debts and legacies, he gave (in words which I do not at present stop to consider) the whole of his estate between his brother and sister, Major Smith and Mrs. Margaret Heugh. These two persons survived him; but Major Smith died intestate, leaving his sister, Margaret Heugh, his next of kin and also his heir at law. The share in the general estate of the truster, if it consisted purely of personal property, or if, by the dispositions of the trust settlement, it had acquired the quality, in the eye of the law, of pure personal property, would, under the circumstances, have vested absolutely in Mrs. Margaret Heugh, being his sole next of kin. On the other hand, if that share, so far as it consisted of heritable property, retained the character of heritable estate, it would have descended, no doubt, to the sister, Margaret Heugh. The question would then arise, whether it was incumbent upon Margaret Heugh, in order to complete her title as heir, to take up that inheritance by serving as heir to her deceased brother, Major Smith.

That particular point I think was taken for granted in the Court of Session, because the circumstances are these: Mrs. Margaret Heugh, although she never served as heir to her brother, made a trust disposition of the whole of her property, real and personal; and the contest at the bar arises between the parties claiming under that disposition, and the individual who, on the death of Margaret Heugh, became entitled in law to serve as heir of Major Smith. If the right of Margaret Heugh to the share of Major Smith was a right which she had the power of disposing of by her trust disposition, then, *quacunque viâ*, the respondents at your Lordships' bar would have been entitled; and the question of the construction of the trust settlement of the truster, John Smith, would have been an idle and superfluous discussion. But the Court of Session took it as an indisputable fact, that, if the share of the Major remained heritable so far as it was constituted of heritable estate, then that share, by reason of the want of service on the part of Margaret Heugh, did not pass under the trust disposition of Margaret Heugh. The admission, consequently, that that share remained *in hæreditate jacente* of the Major, and consequently passed to the present appellant, is an admission and an acknowledgment, that becomes the very basis of the discussion before your Lordships. And, as I have already observed, unless that had been taken as an indisputable and acknowledged fact, the discussion would have been the most idle and irrelevant in the world. I have no doubt, therefore, that there is no room at present for the question that has been so raised. But, if there had been room for entertaining that question,

I should have had no hesitation in advising your Lordships to come to the conclusion, upon all the authorities and all the text writers, that have been referred to upon the law of Scotland, that the *jus crediti*, which the Major had to one share of the general trust estate, and of the heritable property as constituting part of it, partook of the nature and quality of the subject itself, and is governed by the same rules of law as to its transmissibility by descent, which would be applicable to the subject to which it applies. If the subject, therefore, being heritable estate, required, on its transmission by descent from the Major to Margaret Heugh, that she should make up her title to the heritable right, and serve as heir to her brother, then the *jus crediti*, which is attempted to be distinguished from the estate itself, becomes, I think, indisputably entirely subject to the same rule. But, in reality, it is a distinction in name and not in fact; for the *jus crediti* is no more than another denomination of what may be called the estate of a beneficiary or an equitable estate; and it receives that title only when it is regarded, under the aspect of the right which the beneficiary has to call upon the trustees to convey, to transfer, or to denude themselves of the possession of this subject. I have no hesitation, therefore, in advising your Lordships, that there is nothing at all of reality and substance in that objection which has been now attempted to be raised.

Then, if that be so, the determination of the cause depends entirely upon the inquiry, whether the share of Major Smith, under the trust settlement of John Smith in the heritable estates therein comprised, was, at the death of Archibald, of the quality of heritable or of movable property. And this depends upon the other question, whether, by the trust disposition and settlement of John Smith, his heritable estate was absolutely converted into movable property.

The principle or doctrine of conversion appears to be the same both in England and Scotland. Conversion is a question of intention, and depends on the nature and effect of the directions given in any settlement or will. If real or heritable property be vested in trustees upon an absolute and unconditional trust for sale, either declared or necessarily implied, and the proceeds of such sale are disposed of, there is (in the quaint phrase of the English law) an out and out conversion for the purposes of that disposition; and the interest of every beneficiary taken under the disposition is of the nature of personal or movable property. But if, instead of an absolute and unqualified trust or direction for sale, the right to sell is made to depend on the discretion or will of the trustees; or is to arise only in case of necessity; or is limited to particular purposes, as, for example, to pay debts; or is not, in the appropriate language of Lord Fullerton in the case of *Blackburn*, "indispensable to the execution of the trust," then, in any of these cases, until the discretion is exercised, or the necessity arises, and is acted on, or after the particular purposes are answered, there is no change in the quality of the property; and the heritable estate must continue to be held and transmitted as heritable. These principles are clearly deducible in Scotch law from the cases of *Durie*, *Patrick*, *Blackburn*, *Williamson*, and *Pearson*, which have been cited at the bar.

The words of Lord Fullerton in *Blackburn's case* are singularly felicitous. Lord Fullerton there says, in one part of his judgment, "The very terms of this leading direction necessarily imply a conversion of the heritage, and a money payment of the shares into which the succession was to be divided." And in another part his Lordship, speaking of the provisions of that settlement, says, "I can read these provisions in no other way than this, that the whole estate was to be valued in money, and that each child's share was to be estimated and paid in money as they respectively arrived at the age of 25. That being the case, it is clear to me, that the exercise of the power to sell or convert was not optional, but indispensable to the execution of the trust."

Now, I think that particular inquiry, so expressed by Lord Fullerton, is exactly the inquiry which we have to prosecute with reference to the language of this settlement, in order to arrive at a correct conclusion of the intention of the trust disposition which he has made. I shall, therefore, inquire, in the language of Lord Fullerton, whether there be in this trust disposition an imperative direction to sell at all events, or whether the sale is an indispensable condition for the execution of the trust.

Now, inviting your attention to the settlement which has been so much discussed before your Lordships, your Lordships will find its effect to be, that the *universitas* of the property is first absolutely vested in trustees. They are directed, "from the produce of my means and estate," to pay the debts. They are then directed to pay a variety of legacies, which are enumerated; but there is, in no part of any one of those directions, anything which requires them of necessity to begin by selling the real estate, before they address themselves to the performance of those directions.

Then, after that has been done at great length, the truster or testator takes up the disposition of the residue; and it is agreed on all sides, that the question in controversy turns on the true meaning and the legal effect of the disposition so made. The language is this: "I direct and appoint my trustees to pay over the residue and remainder of my means and estate generally above disposed, or the prices and produce thereof." Now the words "pay over," it is admitted on all sides, are regarded as equivalent only to a direction to transfer or convey. And if they

are so construed in conformity with what was said by Lord Fullerton, adopting the observation of LORD ST. LEONARDS in the case of *Smith*, your Lordships will find, from the very words of the trust disposition, that the truster contemplated the residue of his estate being transferred; because that he uses those words under the supposition, that the estate might remain in its integrity as he left it, is plain from the words that follow. For he puts as an alternative "or the prices and produce thereof." In plain language, therefore, it is a direction to the trustees to convey the residue of the real estate, or the produce of that estate when sold. He goes on then to speak of this being the division to be made between his brother and his sister "equally betwixt them, share and share alike"—words which would be clearly applicable to a disposition of the property when given to two persons in the character of tenants in common. And he adds these words, "and their heirs and assignees whomsoever, with all the rights and securities thereof which may be vested in my trustees,"—a direction pointing immediately to the possession of the title to the property comprehended within the direction. But he goes on to put this beyond the possibility of doubt, that, so far from directing a sale in all circumstances and under all contingencies, he contemplates a sale only if it becomes necessary. Necessary for what?—necessary for the particular purposes of this disposition. If it was not necessary, then the trustees are vested with the ordinary power and authority for the management, the leasing, and the administration of the heritable estate in that character. Accordingly, he says, "with power to my trustees to enter into possession of the whole of my heritable and movable estate, to make up all necessary titles thereto, to lease the heritable property thereof, or, if necessary, to convert the same into money." Now, there is not one word of that particular clause which can be made consistent with anything like that which Lord Fullerton describes as an imperative obligation to sell, or with anything similar to that which Lord Fullerton in other words describes, "a sale being an indispensable condition to the execution of the trust." It is very far from the meaning and intent of this testator, that a sale should either be made a matter of peremptory obligation, or that a sale should be regarded as indispensable to the execution of the trust.

Without fatiguing you further, although there are many other things, that no doubt will occur to your Lordships as bearing upon and confirming this conclusion, I think I may venture to say, that there never was a trust disposition to which the character of imposing a peremptory duty, an absolute and unconditional obligation to sell, could be attributed with less accuracy or propriety than it can be attributed to this trust settlement. The whole foundation, therefore, of the judgment of the Court below appears to me (with all deference to the learned Judges of that Court) to fail altogether; and I have no hesitation in advising your Lordships to reverse that judgment and to make a declaration in conformity with the prayer of the summons of the present appellant, namely, that the one just and *pro indiviso* equal half of the residue of the trust estate of the deceased John Smith, in so far as it consisted of heritable property, remained in the *hereditas jacens* of Major Smith, and now belongs to the present appellant as his heir at law. That, as I have said, is the true conclusion, that ought to be arrived at from the facts before you, and from the interpretation of the law bearing upon the case. And I therefore recommend your Lordships to reverse the judgment of the Court below, and to substitute that declaration.

LORD CRANWORTH.—My Lords, I have very little to add in this case beyond expressing my entire concurrence in the view which has been taken by the LORD CHANCELLOR. Upon the first point that was argued by the Lord Advocate here, but which certainly was not argued or investigated in the Court below, when the question comes to be sifted and examined, there really is no doubt whatever. There can be no doubt, that, as a general proposition, all heritable subjects in Scotland are subject to the necessity on the part of the heir of taking up service, or being served either by general or by special service. In the present case it is by general service, because there is no doubt, that the passages cited from Mr. Bell, and referred to, clearly shew, that a *jus crediti* of this sort, which is a right (unless, arguing in a circle, we hold it not to be a heritable right) to have an undivided share of the heritable subject, is a subject which requires service just as if it had been an estate not of that character.

That difficulty being removed, the only question is, whether the view taken by the learned Judges below on the subject of conversion was or was not a sound and correct view. I entirely concur in what the Judges below said, that if there was an absolute duty imposed upon these trustees to sell at all events, and without reference to any discretion on their part, for the convenience of those who were interested in the produce—if there was an absolute duty imposed upon them to turn this into money or not, would be immaterial, and in whatever form it was then held, it would be treated for the purpose of succession, as if it were money. It is impossible, I think, consistently not only with our notions in England, but with the other cases which have been referred to by my noble and learned friend on the woolsack, and which are very numerous, to hold, that there was any such absolute duty imposed upon these trustees. On the contrary, I think this is a case in which there is the strongest reason for inferring, that it was meant distinctly in the mind of the truster to be left to their discretion. The very circumstance, that they may lease, and that they may make up title, and so forth, seems to me to put that beyond all doubt.

It was said, that either Archibald Smith or Margaret Heugh might have insisted upon the estate being sold. In my view of the case, it is not at all necessary to controvert that. Supposing they had insisted upon its being sold, they might have altered the character of the property. But, inasmuch as they did not insist upon its being sold, and it was not sold, it is impossible to hold, that their representatives after their death could insist upon its being sold; because that would be just to enable one person to say—it shall belong to me; whereas, in another view of the case, it would belong to another person.

On the whole, therefore, it seems to me, that the course suggested by my noble and learned friend is perfectly correct. The judgment of the Court upon that part of the summons which relates to the reduction does not come before us, and appears to be substantially right. Therefore it is only the other part of the judgment which ought to be reversed, with the declaration that my noble and learned friend has suggested.

LORD KINGSDOWN.—My Lords, I quite agree with your Lordships as to the conclusion at which you have arrived, and the grounds upon which you have placed it. And as we are not desirous of encouraging the repetition of arguments at the bar, I think, that perhaps I should set a good example to learned counsel by avoiding a repetition in my judgment.

LORD CHANCELLOR.—I think the form of your Lordships' order had better be, to reverse the interlocutor of the Lord Ordinary, which is at page 25 of the case, and to reverse the interlocutor of the Inner House, and to find in the terms of the reclaiming note of the appellant, by which the appellant prays "to recall the said interlocutor, to repel the defences in so far as applicable to the declaratory conclusions of the summons, and in particular, the third and fourth pleas in law for the defenders, and to decern in terms of the said declaratory conclusions, with expenses." I apprehend that that does not relate to the reduction, but relates only to the point of the construction of the trust settlement.

Mr. Anderson.—I think we all agree upon that. The claim for expenses only relates to the declaratory conclusion, so far as regards the discussion on the *jus crediti*. We have been found liable to the expenses of the reduction, and now we are to be declared entitled to the expenses of the declarator.

Lord Advocate.—That is quite true, with this observation: the other side have not been found liable to the expenses of reduction, as far as the record is concerned, which expenses are reserved by the interlocutor. There is a reservation of all other questions of expenses under the finding of 27th November 1858. So that we are in all respects at variance on that subject.

LORD CHANCELLOR.—Their Lordships do not mean to touch anything that has been found in respect of so much of this action as relates to the question of reduction.

Interlocutors reversed, and cause remitted with a declaration.

For Appellant, Holmes, Anton, Turnbull, and Sharkey, Solicitors, Westminster. — For Respondents, Grahame, Weems, Grahame, and Wardlaw, Solicitors, Westminster.

JULY 18, 1862.

HER MAJESTY'S ADVOCATE, *Appellant*, v. THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF EDINBURGH, *Respondents*.

Statute—Clause—Construction—Land Tax—Commissioners of Supply—Statutes, 23rd January 1667—38 Geo. III. c. 60—5 and 6 Will. IV. c. 64, §§ 10, 13—*In an application at the instance of the Crown against the Commissioners of Supply for the county of Edinburgh:*

HELD (affirming judgment), *That the latter were not bound to furnish the collector of land tax for the county with an annual assessment roll, specifying the names of the subjects liable to be assessed, the sums of land tax payable therefor, and the names of the persons liable in payment. The Commissioners must inform the Treasury of any alterations made by them in the assessments, but are not bound to do more.*¹

The Crown appealed, arguing in their *printed case* that the judgment of the Court of Session should be reversed, for the following reasons:—"1. By the Statutes founded on, the respondents are bound to furnish to the Crown collector a cess or tax roll, as it is necessary for the purpose of levying the tax, in respect the Commissioners are appointed for the purpose of raising and levying the tax, and are authorized to do everything necessary for that purpose. 2. Because,

¹ See previous reports 23 D. 933 : 33 Sc. Jur. 484. S. C. 4 Macq. Ap. 387 : 34 Sc. Jur. 657.