

"repel the said plea, in so far as urged as a title to exclude the declaratory and reductive conclusions of this action;" and so Mr Watt was enabled to go on after that for a judgment reducing the arrestment. There is a reservation of the "defenders' right to plead retention in another action." Whatever action that was intended to apply to does not affect the question. We are all agreed that the first part of the interlocutor reclaimed against is well founded. His Lordship thereby reduces the arrestment, and so decides that the diligence was inhabile. But then he goes on to find, declare, and decern, under the declaratory conclusions, that the defenders are bound to make payment to Watt of the bonuses, dividends, and profits arising on the stock, so long as he continues in right thereof. He does so, however, to this effect only, that the defenders are to be bound to make payment to him only from and after 30th November 1863—that is the date of the transference. Now, I think his Lordship must have forgotten that the petitory conclusions were in November 1864 finally disposed of. With regard to the declarator he has given, the great objection is that Mr Watt has not any active title to demand payment. No person can demand payment of dividends until he has become a shareholder, and no person can be a shareholder till he appears in the books of the company. But this gentleman's transfer was returned because the company refused to recognise the right of Anderson to assign, and declined to register the transfer. Whether in so acting the company was right or wrong I don't know, because the point is not raised on this record, and indeed could not be raised; and nothing could be more inconvenient, if indeed it is not altogether incompetent, than to decide in this action whether Mr Watt is entitled to be registered, or whether the company is entitled to refuse to receive any purchaser. That question must form the subject of another action.

The other Judges concurred, Lord Deas remarking that in so far as the Lord President's observations seemed to imply that a shareholder cannot insist for payment of dividends until he is registered, he wished to express no opinion on the subject at present.

The arrestment was therefore reduced as inhabile, and *quoad ultra* the action was dismissed, reserving to the parties all pleas which they may urge in another action.

Agent for Pursuer—Wm. Officer, S.S.C.

Agent for Defenders—James Webster, S.S.C.

Thursday, Feb. 28.

Edward Strathearn Gordon, Esq., late Solicitor-General, this day presented to the Court her Majesty's commission in his favour as Lord Advocate of Scotland, and the customary oaths were administered to his Lordship.

Friday, March 1.

FIRST DIVISION.

LORD BLANTYRE AND OTHERS v.
THE CLYDE TRUSTEES.

Foreshore—River—Injury to Banks—Reparation—Statutory Powers. An action at the instance of a riparian proprietor against statutory trustees of a public river for declarator that they were bound to raise the foreshore to the level which

existed prior to the execution of certain operations performed by them under powers from Parliament, and for damages, dismissed as irrelevant.

This is an action at the instance of Lord and Lady Blantyre and the Master of Blantyre against the Clyde Trustees in reference to certain operations of the defenders on the river Clyde and its banks. The Lord Ordinary (Barcaule) dismissed it as irrelevant in so far as the first four conclusions were concerned, and ordered issues in regard to others. The nature of the conclusions, and the Lord Ordinary's mode of dealing with them, are fully explained in his Lordship's

"*Note.*—The conclusions of the summons are divided into eight heads. Those contained in the first four heads relate to operations upon the foreshore of the Clyde between the pursuers' lands and the main channel, and to injury to the pursuers' lands. This, which is much the largest portion of the case, is distinct from the remaining conclusions, which relate to the East and West Ferries of Erskine, and to beacons or perches erected by the Clyde Trustees in the river opposite the pursuers' property.

"The first-mentioned portion of the summons, contained within the first four heads, consists of declaratory conclusions for declaring the obligations alleged to lie upon the defenders in regard to the matters there referred to—conclusions *ad factum præstandum*, to have the defenders ordained to execute certain works—and lastly, conclusions for damages or compensation for injury done to the pursuers' property by the operations of the Clyde Trustees.

"1. The first conclusion is for declarator that the defenders are bound to make up the foreshore to the level of the adjoining grounds belonging to the pursuers, or to such a level above high water mark of spring tides as will prevent the foreshore from being overflowed by the water of the river. The pursuers represent the peculiar condition of the foreshore, calling, as they allege, for this remedy, to have been caused by the statutory operations of the Clyde Trustees in deepening the main channel, and erecting training walls along each side of it. The pursuers state (Condescendence VI.) in regard to these training walls, that 'it was part of the scheme and plan, in conformity with which they were erected, and partly the object of their erection, that the intervening ground or space between them and the river bank should be filled up by silting, and by the deposit of dredgings, so as to bring the river banks forward, and render the channel permanent.' The purpose of the conclusion now under consideration is to have this accomplished, so far as regards the foreshore opposite the pursuers' lands, by operations to be performed by and at the expense of the river trustees.

"The raising the level of the foreshore, and its gradual conversion to dry land, may possibly have been contemplated as a result of the operations authorised for the improvement of the navigation; but there is no provision in any of the statutes laying upon the trustees a substantive obligation to undertake operations for that purpose. It is not disputed that they were authorised to perform the operations which are said to have caused the mischief complained of. Indeed, they are the most important part of the works for the execution of which the river trust has been constituted. If these statutory operations have had a deleterious effect upon any portion of the bed of the river, within its original banks, and if there is no pro-