Friday, Nov. 17.

FIRST DIVISION.

ADVN.—DINGWALL *v.* CAMPBELL'S TRUSTEES.

Counsel for Mr Dingwall—Mr Gordon and Mr Gifford. Agents—Messrs MacRitchie, Bayley, & Henderson, W.S.

Counsel for Campbell's Trustees—The Solicitor-General and Mr Cook. Agents—Messrs Hill, Reid, & Drummond, W.S.

The Court gave judgment in this case to-day, holding that Mr Dingwall, the vassal, was entitled to relief from his superiors, both of augmented stipend and of poor rates. It was not quite clear that the Court were entitled to decide the question as to the poor rates, on the record as it stood, but both parties concurred in consenting that the Court should decide it also.

The LORD PRESIDENT said—These counter-actions of poinding the ground have been decided by the Sheriffs of Fifeshire on grounds which, it is now conceded, are not tenable. They sustained certain pleas stated by the superiors against the vassal's claim to relief on the ground that he was not in right of that claim. The judgment since given by the House of Lords in the case of Sir William Stewart against the Duke of Montrose is conclusive as to that matter. The question which we have now to deal with is substantially whether the vassal is entitled to the relief which he seeks. His claim is rested on the terms of the feu-disposition of 1780, the position of the parties at the time, and their actings under it since. The clause of relief in the disposition is of very wide application, and certainly gives relief from many public burdens which would otherwise affect the lands. It is to be kept in view that the disposition bears to alienate not only the lands of Tarvitmill, but also the teinds, and, in addition, other lands in warrandice. One of the burdens from which relief is given is minister's stipend. The vassal says this comprehends augmentation of stipend since 1780, as well as stipend then exigible. The superiors say it does not import relief from augmentations, and this especially in the case of a deed which conveys the teinds as well as the lands. There is a question whether or not the teinds are actually conveyed. It is said the granter of the feu-disposition had no power to convey them. This is disputed, and it is clear, at all events, that the deed professes to convey them, and this may be sufficient for us in order to ascertain what the parties intended. We must look to the whole deed and judge of its fair meaning. It is remarkable that it sets out with a very comprehensive statement of what was intended—viz., that the lands were to be held by the vassal "free of all burden whatever other than the feu-duties." It is reasonable that we should construe the subsequent clauses in connection with this. So reading the deed, I think we must hold the clause as applicable to augmented stipend. Such a reading is consistent with the declared object of the deed. But, further, we have had an inquiry into the construction put by the parties themselves upon the deed. This was considered all-important in previous cases of the kind. It is clear from the evidence which has been led that the usage under the disposition supports the construction of it to which I think it is fairly entitled. Then, as to the poor rates I think the vassal is also entitled to relief of them under the clause. Were the question an open one, I might have wished farther argument upon it, but I think it has been decided by the Second Division in the case of Hunter. and I see no sufficient reason to disturb that decision.

LORD CURRIEHILL arrived at the same result, but on somewhat different grounds. His Lordship founded not so much on the obligation to relieve the vassal of "minister's stipend" as on the obligation to relieve him also of "teind duties." This meant that the superiors were to relieve the vassal of all duties claimable by any one in respect of the teinds. One of these was the payment of stipend so far as already fixed, but another was the payment of the surplus to the titular of the teinds. This necessarily included augmentations; for these just implied a transference of the teinds from the titular to the minister to the extent augmented. He also founded on the fact that his view was confirmed by usage.

LORD DEAS coucurred with the Lord President, and founded on the fact that relief was given from all minister's stipend imposed *or to be imposed*, in a deed which declared that the subjects were to be held free of *all* burdens but feu-duties. The previous decisions were not easily reconciled, but they all bore to proceed on the intention of the parties, which his Lordship held was here apparent, not only on the face of the deed, but also from the actings of the parties under it.

LORD ARDMILLAN concurred, and proceeded on a combined view of the grounds stated by Lord Curriehill and those stated by the other Judges.

STEUART *v.* MOSSEND IRON CO., *et e contra.*

Counsel for Mr Steuart—Mr Gordon and Mr Broun. Agent—Mr Thomas Sprot, W.S.

Counsel for Mossend Iron Company—The Lord Advocate, Mr Hector, and Mr Lee. Agents—Messrs Hamilton & Kinnear, W.S.

Mr Robert Steuart of Carfin raised an action in 1858 against the Mossend Iron Company for the purpose of having it declared that a certain writing, subscribed by him and them in 1857, formed an effectual contract of lease betwixt them of minerals in the lands of Carfin, and also for implement and damages. The matter as to which parties were at issue was to what was the precise boundary of the mineral field leased, the iron company averring that when they signed the writing they were under essential error as to the boundary. In 1864, Mr Steuart lodged issues which he proposed for the trial of the case, but the Court, at the discussion of them, intimated that in order to maintain their allegations of essential error, it would be necessary for the iron company to raise a reduction of the lease on that ground. This action was accordingly raised. Mr Steuart pleaded as a preliminary defence that the action was incompetent, in respect the parties had in the other action renounced probation on the question whether a binding lease had been entered into. Lord Ormidale reported the case at this stage, and to-day the Court, after hearing Mr Archibald Broun, repelled the preliminary defences, and remitted to the Lord Ordinary to proceed with the case.

SECOND DIVISION.

MACLAREN *v.* THE CLYDE NAVIGATION TRUSTEES. MACLAREN *v.* HARVEY.

Counsel for the Pursuer—Mr Patton, Mr Gordon, and Mr Marshall. Agents—Messrs J. & G. H. Gibson, W.S.

Counsel for the Defenders—The Solicitor-General and Mr Shand. Agent—Mr Simon Campbell, S.S.C.

These cases, which involve the same point—viz., the liability of the Clyde Trustees and others to pay a share of the assessment imposed by the heritors of Renfrew for the purpose of rebuilding the parish church there, were reported in our columns at the time of their hearing during the extended sittings. They were advised to-day.

LORD NEAVES delivered the opinion of the Court to the following effect:—This case has been found to be attended with difficulty; but on a careful consideration the Court have come to be of opinion that the interlocutor of the Lord Ordinary

is erroneous, and must be altered. A similar case, that of Maclaren *v.* Harvey, has been considered at the same time, and must be disposed of in the same manner. The principles applicable to the two cases are the same, and no substantial distinction can be taken between them. These actions are at the instance of a collector of an assessment imposed by the heritors of the parish of Renfrew for rebuilding the parish church, and the defenders are sued as "heritors, owners, or proprietors" of real property within the parish. They are entered as proprietors of the subject in question in the valuation roll of the county and parish for the year 1860, in which the assessment was imposed; and they are called upon to pay the assessment in proportion to the amount of annual value at which the subjects are entered in that roll. The connection of the defenders with those subjects is of this nature—that they respectively hold leases of them for periods exceeding 21 years. The leases are not all of them before the Court, but the lease of the Harveys has been printed, and it appears to be a building lease for 99 years from 1823, granted under the provisions of 10 Geo. III., in reference to entail improvements. The leases of the Clyde Trustees are also for 99 years, but dating from 1788 and 1795 respectively. The assessment for rebuilding this church has, by a resolution of the heritors, been imposed, not according to the old valued rents, but according to the real rent of properties within the parish, and that mode of levying the assessment is undoubtedly legal and effectual. Had the assessment here been imposed according to the old valued rent, no question on the subject could have arisen. The actions here brought are rested on peculiar enactments in the recent Valuation of Lands Act (1854), which could not have been said to affect an assessment on the old valued rent. It is assumed, indeed, and seems to be clear, that under an assessment lawfully imposed according to the real rent, the defenders would not have been liable as the law stood before the recent Valuation Act. It is in the option of the heritors of a parish, in certain circumstances, to say whether an assessment of this kind shall be levied according to the valued or the real rent; but although their choice in that respect may alter the details of the assessment, it does not seem to alter the class of persons who are liable. The original enactments on this subject laid the liability upon "parishioners," but from the earliest period this phrase has been construed to mean the heritors or proper owners of lands and heritages within the parish. It has been decided that superiors are not liable, for they have not the *dominium utile*, and that liferenters are not liable, for they have not the perpetual or permanent right. Liferenters may be liable for other assessments, annually recurring and naturally falling as a burden on the annual fruits. But they are not liable for assessments of this kind, which go to the building, erection, or reparation of a permanent edifice, and which naturally therefore attach to the fiar of the subject. It has never been held that tenants of heritable snbjects are liable for this assessment whether their leases be of a long or a short duration. Apart from the recent Valuation Act, there is no very obvious or clear ground for holding that a lessee would be liable even if his lease was practically a perpetuity. But no such question here arises, as these leases are not said to be of that description, and are not so in reality. As already said, the ground of liability here founded on, and the only ground, is derived from the recent Valuation of Lands Act; and the question is whether the provisions of that Act impose upon leases, under leases of more than 21 years, a liability for this assessment, which, but for the Act, would not attach to them. The Court are of opinion that the Act has no such effect. In considering this question it is important to inquire what is the general purpose of the Valuation Act. This seems to be explained in the title and preamble of the Act. Its title is "An Act for the Valuation of Lands and Heritages in Scotland." Its preamble is that "it is expedient that one uniform valuation be established of lands and heritages in Scotland, according to which all public assessments leviable, or that may be levied according to the real rent of such lands and heritages, may be assessed and collected, and that provision be made for such valuation being annually revised." Further light upon the leading object of the Act is to be derived from the last section but one of the Act—the section which immediately precedes the interpretation clause, by which section (41) it is declared *inter alia* "that nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment." From these elements it seems easy to understand what the main purpose of the Acts was. There exist in reference to the exigencies of the country a variety of assessments of different kinds, imposed upon different classes of persons in respect of different kinds of heritable property; and in order to work out more easily the collection of those assessments it was thought advisable to have one uniform valuation made up, which might be resorted to in calculating and levying the assessments imposed by the previous Acts, where those assessments are or may be levied according to the real rent. The Valuation Act is not an Act for taxing parties. It is an Act merely for valuing properties. The warrant and nature of each assessment must be looked for in the original Acts imposing it, and it is only the arithmetical ascertainment of its amount that the Valuation Act is intended to facilitate. All sorts of heritages are to be put into the roll and valued, but all sorts of heritages are not to be subjected to each assessment on that account. The original Act must fix what classes of properties are to be looked for, and it is the value only that is to be found in the valuation roll. In the same way certain classes of persons are to be entered in this roll in connection with heritages, but those persons only are to be subjected in any assessment who were made liable by the statute imposing it. The 33d section of the Act makes it imperative to take the real rent of any subjects from the valuation roll; but it is nowhere said that the roll is to be the rule as to the parties assessable. The entry of a person's name upon the roll is no ground of liability unless he is otherwise liable, and its omission from the roll is no ground of exemption if he is not otherwise free. This seems the plain and simple purpose of the Act as viewed in reference to its general objects and character. But it is said that under the *sixth* section there is a new liability imposed, and it is upon this section that the pursuer's case is really rested. The leading object even of this sixth section is to fix the mode of estimating the yearly value of lands and heritages. With respect to that matter, a distinction is drawn in the section between leases of a longer and a shorter duration, the line being drawn at 21 years in ordinary snbjects, and 31 years in the case of minerals. The main purpose of this distinction is, that in the shorter leases the actual rent shall be taken as the true value, which it will probably be; while in the longer leases it is not necessarily to be taken as the value, it being thought, probably in many cases, that the present value may there be different from the rent. It would seem, therefore, that we should not naturally expect an alteration of liability under a clause which professes to deal merely or mainly with the estimate of value; but if such a charge were intended, it ought at least to be explicitly set forth, and not made indirectly or by mere inference. Upon this point, however, an argument is raised which seems to form the strength of the pursuer's case. It is said that in these longer leases the actual value is taken and not the actual rent. This is an injustice or a hardship to the proprietor, who might be assessed at a rate greatly exceeding the benefit received by him from the subjects; and on this account it is argued the enactment in the sixth section has been introduced, that the lessee under the long

lease "shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor," in manner therein mentioned. There is some apparent plausibility in this view; and it may be a hardship in some cases that the heritor should pay an assessment according to the actual value, and not according to the rent he receives. But it seems difficult to hold that the clause in question was intended to remedy this or any other hardship; and it is certain that, according to the pursuer's interpretation of it, it would create more injustice than it could possibly remedy. If equity had been the object of the clause it would have taken into view, not the original duration of the lease from the term of entry, but the period for which it had still to run at the time of the valuation and assessment. It may be hard that a proprietor, at an early part of a long lease, shall pay an assessment according to the actual value of a subject which he is to be kept out of for 100 years, and for which he is only to get in the meantime a nominal rent. But, on the other hand, it would be as hard or much harder that every tenant in a lease longer than 21 years should, even in the last year of his possession, pay a great share of the expense of building a church from which he is not to derive the slightest benefit, and for which he was in no respect liable by the law as it previously stood, and as contemplated when the lease was entered into. Such an inversion of the rights of parties, and such an alteration of a voluntary contract, would be eminently unjust, and is not to be presumed to have been intended. Again, under the clause in question, where long leases are dealt with, there are many cases where the hardship may lie quite the other way from what the pursuers urge. The tenant, though paying a small rent, may have begun by paying a large grassum; or he may be bound, as generally happens in a building lease, and as seems here provided for, to leave buildings on the ground such as will be a great boon to the landlord. To lay upon the lessee the church assessment would in such circumstances be most inequitable. Yet none of these considerations are here taken into view, although they were manifestly essential if equity was the object of the clause. Leases are matters of contract as to which parties are free to fix their own rights and liabilities. To alter the effect of subsisting leases in this way would be a violent proceeding on the part of the Legislature; and as to future leases the parties may always regulate their rights so as to meet this and special cases in any way they like. Looking to these considerations, it seems much more probable that the object in view in the 6th section was merely some matter of convenience with a view to the collection of assessments, without its being intended to effect any change of ultimate liability. The words used, indeed, in the 6th section are too narrow and limited to have the operation contended for. The only substantive enactment in the section that can be argued to impose liability is, that "the lessee under such lease shall be deemed and taken to be also *the proprietor* of such lands and heritages *in the sense of this Act.*" What follows relates not to the liability, but to the relief competent to the lessee. But the natural meaning of this substantive enactment seems to be far short of what the pursuer contends for. The lessee is to be the proprietor *in the sense of this Act*, and this may have certain effects, such as making him the party to whom notice is to be given under the 5th section. The clause may even go the length of making the lessee be considered the same as a liferenter or other person in the actual receipt of the rents and profits in terms of the interpretation clause of the Act. But this will not make the lessee any more than a liferenter liable to a church assessment. If such a result was intended it would have been easy in the 6th clause to say that the lessee in the long lease was to be deemed and taken as the proprietor or heritor in the sense of *all Acts of Assessment* imposing liability upon owners or heritors. That would have been a distinct and explicit enactment, but it would certainly not have been easily reconciled with the declaration at the end of the Act, that nothing contained in it was to render liable to assessment any person not previously liable. There is one case which may seem to explain and satisfy the words of the enactment in clause 6th. By the 44th section of the Poor Law Act it is enacted that lease-holders under a building lease shall, in reference to the poor assessment, be deemed and taken to be the owners of the houses built. Here, then, is an enactment in a previous statute, by which certain lessees are liable as owners, and in that case the enactment of the 6th section of the Valuation Act, that certain lessees shall also be deemed proprietors, may come into play. A lessee under a long lease who possesses both land and houses, may be called upon in the first instance to pay poor assessment for both, and may then get his relief from the proper owner to the extent of the rent which he pays for the mere land. I do not say that the 6th section is well expressed or framed even in this view; but this possible case may have been in the mind of the framers of the Act, and may account for its terms. I may express here my satisfaction that we thus escape the necessity of meeting the ulterior anomalies that the pursuer's view of the statute might lead to in reference to the division of the area of a church. The apportionment of the area and the liability for the assessment ought indisputably to go together. But it is as yet unheard of in the law of Scotland that the area of a church should be apportioned among any other parties than the true and proper heritors. Upon the whole we think that the only safe and sound construction of the statute is to hold that it does not impose on the defenders a liability to which they were not previously subject, and consequently that they must be assoilzied from the conclusions of the actions.

The judgment of the Lord Ordinary finding the Clyde Trustees liable was accordingly recalled.

R. N.—HENRY GARDINER.

Counsel for Reclaimer—Mr Gordon and Mr Guthrie Smith. Agent—Mr Livingstone, S.S.C.

Counsel for Respondent—Mr Gifford and Mr Black. Agent—Mr Curror, S.S.C.

The question in this case, the circumstances of which have been previously reported, is whether a bequest to "relations" by a testator was a good bequest, or one void from its uncertainty and vagueness. The case was advised to-day—LORD BENHOLME delivering the judgment of the Court. His Lordship having narrated the question as it arose in the case, said—The argument was addressed to us to the effect that had the testator intended to benefit a limited class such as the heirs, who would have taken *ab intestato*, he would just have left the law to take effect. But it is obvious that this testator did not intend the law to come into operation, for he makes the bequest of his furniture to both sides of the house. His relations were to get one half, and the other half was to go to the relations of his widow at her death, if she did not enter into a second marriage. Had she married a second time the half intended for her relations would have recurred to the parties who were to take the other half. The Lord Ordinary has found the bequest not to be void by reason of uncertainty. The tendency of our later law is to strive after an interpretation of a bequest which will give effect to a testator's will rather than make it void. I think the natural interpretation of the bequest in the present case is that "relations" should become heirs *ab intestato.*

The other Judges concurred.

Saturday, Nov. 18.

FIRST DIVISION.

PETN.—BAIRD AND OTHERS *v.* THE TOWN COUNCIL OF DUNDEE.

Counsel for Petitioners—Mr Patton and Mr Thoms. Agents—Messrs Lindsay & Paterson, W.S.