

because no party had been called in the process of valuation who was entitled to represent the oure. It appeared that the parties called were—"Charles Earle of Southesk, and David Falconer of Newtown, as patrons of the kirks of Strickathrow and Dunlappie, now annexed together, Master John Davie, late incumbent at the said kirk, and all other present incumbents there, and the tutors and curators of such of the said defenders as are minors, if they any have, for their interest." It was mentioned that the parishes had been vacant from 1695, when the last Episcopal incumbent died, until 1701, and that in 1698 they had been declared vacant, and that during this interval Mr Davie, who was Lord Southesk's factor, had intruded himself as minister for a few months. It was admitted that unless the decree of valuation was bad, there was no free teind.

The Court held, following the recent case of Kilbirnie (*ante*, p. 123), that the minister must first raise a declarator of the invalidity of the decree, and procedure was sisted that he might do so.

The following interlocutor was pronounced:—
"Edinburgh, 16th January 1867.—The Lords, having heard counsel for the minister and heritors, sist proceedings that the minister may bring an action of declarator, or such action as he may be advised, to try the validity or invalidity of the decree of valuation founded upon by the heritors.
"DUN. M'NEILL, I.P.D."

Counsel for Minister—Mr Clark and Mr Asher.
Agents—W. H. & W. J. Sands, W.S.

Counsel for Opposing Heritors—Mr Gifford.
Agent—Alexander Morison, S.S.C.

COURT OF SESSION.

Wednesday, Jan. 16.

FIRST DIVISION.

WARNE AND CO. v. LILLIE.

Issue—Cautionary Obligation. Form of issues adjusted to try a question of liability under a cautionary obligation, the defence being that the pursuers had "given time" to the principal obligant.

This was an action upon a cautionary obligation at the instance of William Warne & Co., indiarubber manufacturers, No. 9 Gresham Street, London, against James Lillie, clothier, 45 Queen Street, Glasgow, sole partner of the firm of Lillie & Ferguson, clothiers there. The defence was that the cautioner was liberated from his obligation in respect the pursuers had "given time" to the principal debtor without his knowledge or consent.

The Court to-day adjusted the following issues for trial:—

"Whether, in reliance on the letters of caution, Nos. 6 and 7 of process, or either of them, the pursuers, the said William Warne & Co., on the usual business terms, furnished goods to Edward Hardmeat, indiarubber merchant in Glasgow, therein-mentioned, sole partner of the firm of Charles Hardmeat & Co., indiarubber merchants there, conform to account, No. 8 of process? And whether, under the said letters of caution, or either of them, and in respect of the goods so furnished, the defender, as cautioner for the said Edward Hardmeat, is resting owing to the said pursuers the sum of £393, 10s. 1d., or any and what part

thereof, with interest at the rate of 5 per cent. per annum, from 1st March 1866 on the sum of £379, 7s., or such other portion of the first-mentioned sum as consists of principal?"

Or,

"Whether the pursuers gave time to the said Edward Hardmeat for payment of the sums sued for, or any part thereof, beyond the usual period of credit allowed in the trade, so as to liberate the defender from liability for the sums sued for, or any and what part thereof?"

Counsel for Pursuers—Mr Millar. Agents—Adam & Sang, S.S.C.

Counsel for Defender—Mr Clark and Mr Shand.
Agents—J. W. & J. Mackenzie, W.S.

Friday, Jan. 18.

FIRST DIVISION.

ADAM AND OTHERS v. GRIEVE AND OTHERS.

Statutory Trust—Election of Members. An Act of Parliament having declared that a certain number of persons should be elected trustees on a certain day, and two of the persons elected having declined to act, held that the election was valid, and that the places of those who declined fell to be filled up as if they had resigned.

This is a suspension and interdict at the instance of George Adam, merchant and shipowner in Greenock, treasurer of the burgh of Greenock; James Tennent Caird, engineer, founder, and iron shipbuilder there; John Orr, jun., baker there; Robert Neill, writer there—all members of the Town Council of the burgh of Greenock; and Duncan Cook, chain manufacturer, Greenock; James Beith, butcher there; Benjamin Noble, merchant there; Thomas Ballantine, distiller there; and John Neilson, hatter there—being all elective members of the Board of Police of Greenock—against James Johnston Grieve, merchant in Greenock, Provost of the burgh of Greenock; Charles Grey, feuar there; James Morton, iron merchant there; John Fleming, worsted manufacturer there; John Hunter, fish merchant there—all bailies of said burgh; Thomas Muir Macfarlane, tanner and skinner; Robert Blair, sugar refiner; and John Crawford Hunter, ropemaker—all in Greenock, and all members of the Town Council of the burgh of Greenock; and Robert M'Vicar, smith; James M'Cunn, bookseller; and Charles Carbery, clothier—all in Greenock, pretending to be water trustees, and to constitute, along with the complainers Thomas Ballantine and John Neilson, "The Water Trust of Greenock," under "The Greenock and Shaws Water Transfer Act, 1866," and along with the said two complainers, to be and act as the water trustees, duly appointed under and in terms of said Act, and also against "The Board of Police of Greenock," constituted and incorporated by "The Greenock Police and Improvement Act, 1865," and the said James Johnston Grieve.

The object of the suspension is (1) To prohibit the individual respondents from acting as "water trustees" for the town of Greenock, or attempting to carry into effect any of the powers or duties conferred or imposed on the water trustees, or the water trust of Greenock, by "The Greenock and Shaws Water Transfer Act, 1866;" (2) To prohibit "the Board of Police of Greenock" from adopting or approving of any minute of a meeting