Thursday, May 21.

GLEN *v.* CALEDONIAN RAILWAY COMPANY.

Interdict—Railway Company—Dividend—Misappropriation—Caution. A holder of railway stock craved interdict against the company (1) declaring or paying a dividend for the previous half-year, and (2) applying money, to be raised under certain special Acts, in payment of dividends, or otherwise than for the purposes of the Acts. The Lord Ordinary passed the note but refused interdict. The dividend was declared and paid. Thereafter a reclaiming note for the shareholder *refused*, and *held* (1) that an interdict *ad interim* could not be granted against what had been already done; and (2) that no sufficient reason had been shown for thinking the Company were going to commit the illegal act complained of. *Observed* that the complainer, holding only £500 stock, and offering no caution for the injury that might result from interdict to the defenders, holding in all twenty millions of stock, while the defenders offered caution for any loss the complainer might sustain through refusal of the interdict, could not obtain the summary remedy craved without a very strong *prima facie* case.

Alexander Glen, proprietor of £500 Caledonian Railway Guaranteed Stock, presented this note of suspension and interdict against the Company and Directors on 27th March 1868, craving the Court (1) "to interdict, prohibit, and discharge the respondents from declaring or paying any dividend or dividends on any of the ordinary stocks or shares of the said Caledonian Railway Company, until the sum of £968,920. 10s. 9d., being the amount whereby the capital of the said Company has been reduced or encroached upon, shall be repaid or replaced out of the nett profits earned by the said Company, after providing for the payment of the interest on debentures and other debts of the said Company and the dividends on the guaranteed and preference stocks and shares of the said Company; (2) to interdict, prohibit, and discharge the respondents from declaring or paying any dividend or dividends on the ordinary stocks or shares of the said Caledonian Railway Company for the half-year ending 31st January 1868, and from carrying any sum to the credit of the revenue of the half-year ending 31st July 1868; (3) to interdict, prohibit, and discharge the respondents from declaring or paying any dividend or dividends on any of the stocks or shares of the said Caledonian Railway Company, except out of the nett profits earned by said Company; (4) to interdict, prohibit, and discharge the respondents from applying the sums of money raised or to be raised, in virtue of the powers conferred by the Solway Junction Railway Act 1865, the Callander and Oban Railway Act 1865, and the Caledonian Railway (Forfarshire Works) Act 1867, or any part of said sums, in or towards payment of any dividend or dividends on the stocks or shares of the said Caledonian Railway Company, and from placing the said sums or any part thereof to revenue account, and from applying the said sums or any part thereof otherwise than for the purposes specified in the said several Acts respectively; and (5) to interdict, prohibit, and discharge the respondents from borrowing money on the security of the stock authorised to be issued by the said Acts or any of them, or in any other way except on mortgages granted in terms of the said Acts, and the other Acts of the said Company, and the Acts incorporated therewith, or any of them; or to do otherwise in the premises as to your Lordships shall seem proper."

The half-yearly meeting of the Company, at which it was proposed to declare a dividend, had previously been called for 31st March. On 28th March the Lord Ordinary on the Bills (BARCAPLE) pronounced this interlocutor:—

"The Lord Ordinary having heard parties' procurators on the caveat lodged by the respondents, and considered the note of suspension and interdict, with the productions—Appoints the respondents to give in answers to the note of suspension and interdict within the next ten days; meantime grants interdict against the respondents from declaring or paying any dividend or dividends on the ordinary stocks or shares of the Caledonian Railway Company for the half-year ending 31st January 1868, and from carrying any sum to the credit of the revenue of the half-year ending 31st July 1868; and also grants interdict against the respondents from applying the sums of money raised or to be raised in virtue of the powers conferred by the Solway Junction Railway Act 1865, the Callander and Oban Railway Act 1865, and the Caledonian Railway (Forfarshire) Works Act 1867, or any part of said sums in or towards payment of any dividend or dividends on the stocks or shares of the said Caledonian Railway Company, and from placing the said sums, or any part thereof, to revenue account, and from applying the said sums, or any part thereof, otherwise than for the purposes specified in the said several Acts respectively, and to be intimated.

"*Note.*—The complainer did not press for interim interdict in terms of the first and third heads of the prayer of the note of suspension. It does not appear to the Lord Ordinary to be necessary or expedient to deal at present with the fifth head of the prayer, as regards interim interdict, while answers have not been given in. With regard to the second and third heads of the prayer, he thinks that the safest course is to give interim interdict, which will keep matters entire until parties can be fully heard after answers shall have been given in by the respondents."

At the half-yearly meeting on 31st March, in consequence of this interdict, no dividend was declared, but an adjourned meeting was appointed to be held on 14th April. Answers were lodged; and thereafter, on 13th April, the Lord Ordinary on the Bills (ORMIDALE) pronounced this interlocutor:—

"The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings—Passes the note, and recalls, *hoc statu*, the interdict formerly granted.

"*Note.*—When the case was considered by Lord Barcaple, the answers for the respondents had not been lodged. It is not surprising, therefore, that, yielding so far to the very strong averments of the complainer, his Lordship should have granted the modified interdict which he did for the few days necessary to admit of the statements and pleas of the respondents, as well as of the complainer, being before the Court, especially as comparatively little or no injury or inconvenience could arise from such a course.

"The respondents' case in answer to that of the complainer being now before the Court, and both parties having being fully heard, the Lord Ordinary has come to the conclusion, that while it is proper

the note of suspension and interdict should be passed, in order to the trial and determination of the questions in dispute, there are no sufficient grounds for an immediate interdict. The complainer did not press for a more extended interdict than that granted by Lord Barcaple, but, for the reasons now to be adverted to, the Lord Ordinary has been unable to satisfy himself that any interdict at all should be granted at present.

"It is not alleged by the complainer that the free earnings of the Caledonian Railway Company, during the half-year ending 31st January 1868, are not sufficient to pay the dividends declared and proposed to be paid for that half-year. And whatever may be the objections to which the allocation in former half-years of charges to capital and revenue is exposed, it is not alleged in the present note of suspension and interdict, and it was not stated in the argument which was addressed to the Lord Ordinary on behalf of the complainer, that the dividends declared, and proposed to be divided among the shareholders for the last half-year, and payment of which it was now the object of the complainer to prevent, were not in themselves composed of free earnings, fairly realised during that half-year, and that, dealing with them independently of alleged misappropriations in prior half-years, they are not properly divisible amongst the shareholders. Thus, in regard to the sum of £112,436, 9s. 3½d., referred to in articles 12 and 13 of the complainer's statement, and which appeared to be chiefly relied upon by him in argument as a misappropriation, it is clear, on his own showing, that if it is to be treated as a misappropriation at all, it was not made out of the last half-year's revenue of the company, but made so far back as July 1865, and, of course, out of earnings prior to that date. Accordingly, in both the 12th and 13th articles of his statement of facts, the complainer expressly says that the sum referred to was 'a reduction of, or encroachment upon capital at 31st July 1865.' And so, as regards the other encroachments upon capital, all of them not only being admitted by the complainer, but averred by him as the foundation of his case, to have been made, if made at all, not out of the revenue of the last half-year, but out of the revenue of the two-years ending 31st July 1867.

"It was only, therefore, on the ground that the last and every future half-year's revenue, however fair and accurate in itself, must be retained and withheld from division among the shareholders, till all bygone misappropriations have been replaced, and the capital of the company re-adjusted and recouped, that the demand of the complainer for immediate interdict was attempted to be supported. But while the Lord Ordinary is not to be understood as prejudging, or even expressing any opinion on the question thus raised, he cannot think he would be warranted in now—and in the summary way insisted on by the complainer, not only before the final statements of the parties have been recorded, but before any investigation has been or could be gone into—granting the interdict asked. The more especially does the Lord Ordinary think he would not be warranted in now granting any such interdict, seeing that there is no admission, but, on the contrary, a distinct denial by the respondents of the complainer's allegations of bygone misappropriations. They no doubt say, in the 13th article of their statement of facts, in reference to the sum of £112,436, 9s. 3½d., that "part of it was chargeable to revenue and part to capital," but the proportions are not mentioned; and, so far as the Lord Ordinary can see, or was informed at the debate, there are not at present before him materials for ascertaining them with anything like accuracy. Besides, it is not to be overlooked that, in the same 13th article of their statement, the respondents aver, that "Prior to 31st July 1865 greatly larger sums than those mentioned in this article had from time to time been charged against revenue which might with propriety have been debited to capital, and even after deducting the two sums of £112,436, 9s. 3½d. and £57,222, 9s. 3d. referred to in the resolutions of the general meeting of shareholders of 13th February from capital, the balance, if the whole accounts of the company from 1845 downwards were gone into and re-adjusted, would be greatly in favour of revenue." Now, certainly it does not seem to be inequitable that if revenue had been encroached upon one year to the advantage of capital, that, to the extent of such enroachment, a deduction might be made in another year or half-year from capital, so as to place the latter on its proper footing; and even more clearly does it appear to be equitable, that if the past is to be gone back upon at all, with a view to the re-adjustment and correction of the capital and revenue accounts, and placing them on what might now be held to be strictly correct principles, such re-adjustment and correction ought to proceed with equal regard to the one account as the other; so that if capital is, on the one hand, to be recouped from revenue, when that is necessary, revenue must, on the other hand, when necessary, be recouped from capital. It is only in this way that justice could be done to all the interests involved. But it is obvious that no approximatinn even to such an adjustment and correction of accounts and interests could be gone into at present, and if so, it is thought there can be no sufficient ground for an immediate interdict.

"The only authority cited for the complainer in support of his demand for an immediate interdict was the case of *Bloxam* v. *The Metropolitan Railway Company*, 18 Law Times, p. 41, and 16 Weekly Reporter, p. 490; but when examined, that case does not appear to be in point, for there the interlocutory injunction, as it is called, which was granted, applied to misappropriations out of the then undivided half-years' earnings, leaving for determination at the ultimate hearing the misappropriations alleged to have been made out of former half-years' earnings, and which appear to have formed the subject of what may not inappropriately be termed the declaratory conclusions of the suit. The case of *Bloxam*, therefore, if the Lord Ordinary be right in his view of it, is an authority favourable rather than adverse to the course he has adopted in the present instance. What may be the ultimate judgment in the present case, with or without the aid of a declaratory or other action, it is not for the Lord Ordinary to anticipate.

"Although the Lord Ordinary has only as yet particularly alluded to the alleged misappropriation of the £112,436, 9s. 3½d., his observations apply with equal, and in some respects greater force, to every other misappropriation alleged by the complainer. All of them are denied by the respondents; and it is impossible at present to have the disputed facts relating to them cleared up, so as to enable the Lord Ordinary to form anything like a satisfactory opinion on the subject of them. Nor does he deem it necessary now to enter into any further explanation regarding them, for if he is right in

his views touching the £112,436, 9s. 3½d., and if that alleged misappropriation does not afford ground sufficient for an immediate interdict, it is clear that none of the others can do so.

"In regard, however, to what is called the premium account, which seems to stand in a somewhat peculiar position, the Lord Ordinary may observe that, whatever difficulty may ultimately be found to attend it, he does not think that at present any sufficient cause can be shown in connection with it for the interference of the Court as asked by the complainer. Not only are the parties at issue on material facts regarding this account, and the manner in which it has been dealt with in the past, but the *prima facie* aspect of the matter appears to be adverse rather than favourable to the complainer's contention. Thus, the committee of investigation, whose report is made by the complainer, in articles 8, 9, and 10 of his condescendence, the leading, if not the sole foundation of his case, unequivocally state (Report, No. 12 of process, p. 9) that they cannot concur in the objections suggested on the subject of the premium account by the two accountants employed to assist them, but, on the contrary, that they approve of the course which had been adopted by the Company, and recommend that it should not be departed from.

"The only other point which occurs to the Lord Ordinary as requiring particular notice, is that arising out of the allegation of the complainer, and on which one branch of his prayer for interdict is founded, to the effect that the respondents intend to misapply the money raised, or to be raised by them, under their special acts relating to the Callander and Oban and other works referred to in article 17 of the complainer's statement. And in regard to this point, it may be sufficient to remark that there is no evidence of any such misapplication either made or intended; and it is not to be presumed, in the entire absence of anything like evidence, and in the face of their distinct denial, that the respondents intend to commit what would be an illegal act. Besides, it is important to keep in view that, while the sums which the respondents on the 5th of March last, authorised to be raised under the special acts in question, are not themselves in excess of the statutory powers, it is not alleged by the complainer that there had ever previously been raised any sums whatever under these acts. It therefore follows that if, as alleged by the complainer (stat. 18), and stated by the respondents (art. 17 of their statement), certain sums have been already advanced by them towards the formation of the works authorised to be constructed by the special Acts in question, they must have been paid by the respondents as advances out of other funds, and as the complainer does not allege that such advances were paid out of capital, the explanation of the respondents that they were paid out of revenue may, for the present at least, be taken as correct; and if so, it does not seem unreasonable to hold, at this stage of the litigation, that the sums raised or to be raised under the Company's resolutions of 5th March, may have been, and may be, legitimately applied to the replacement or recouping of the Company's revenue, to the extent of the sums previously advanced and expended out of it.

"These are the leading considerations which appear to the Lord Ordinary to arise from this case in its present state, as bearing on the question whether the complainer is or is not entitled to an immediate interdict as asked by him. There may be various questions of more or less difficulty and importance to be yet determined by the Court; and, as already remarked, the Lord Ordinary is not to be understood, by anything he has now said, as prejudicing in any way their trial and ultimate decision. All he has done, or intended to do, is to explain, so far as he has considered it necessary, the reasons why he thinks he would not have been warranted in granting any immediate interdict. It is obvious that his granting such an interdict might, and probably would, give rise to great inconvenience, if not serious and irreparable injury, to the respondents, and the parties and interests represented by them; while, on the other hand, the non-granting of an interdict at present cannot possibly inconvenience the complainer, or occasion him any loss. He is only one out of about 8000 shareholders of the Caledonian Railway Company, and holds only £500 stock out of upwards of twenty millions. Not only is the stock he holds guaranteed, and therefore, in any reasonable view that can be taken of the position and prospects of the Caledonian Railway Company, perfectly safe, but the respondents have offered, in the 19th article of their statement of facts, to 'find caution to the complainer for any loss and damage which he shall be able to instruct in consequence of the proceedings sought to be interdicted.' The complainer, when asked through his counsel by the Lord Ordinary, if he desired that such caution should be found, declined saying that he did so—probably being quite satisfied, as he could scarcely fail to be, that it was altogether unnecessary. Although, therefore, the complainer may have a sufficient legal interest and title to insist in this note of suspension and interdict, and the Lord Ordinary does not say he has not, or that he is not actuated by proper motives, or has anything but a proper object in view, it is clear that his rights, interests, and objects, whatever they are, will, so far as fair and legitimate, be equally well served by the course which the Lord Ordinary has adopted, as by the course which he has been asked, but has refused to adopt.

"The Lord Ordinary has only to add, that, in consequence of the importance of the questions, and the magnitude of the interests involved, as well as the great ability and zeal with which the respective views of the parties were maintained before him, he has thought it right to enter into a fuller exposition of the grounds on which he has proceeded in giving judgment, than he would otherwise probably have done."

Glen reclaimed, and also presented a note craving the Lord Ordinary to prohibit the Clerk of the Bills from issuing a certificate of the recall of the interdict. The Lord Ordinary, on 16th April, refused this note, and allowed the certificate to be issued in usual form, adding this note to his interlocutor:—

"It appears to the Lord Ordinary that to grant the prayer of the complainer's note would be quite inconsistent with the views he entertains of this case, and on which he proceeded in recalling the interdict. Neither in the note of suspension and interdict nor in his present note does the complainer say that his individual interests as the holder of a small portion of guaranteed stock can suffer or be exposed to the slighest risk by payment of the dividend in question on the ordinary stock. It is not even stated by the complainer that in the event of its being ultimately held, after the necessary investigation, that there has been in bygone

years a misappropriation of funds which must be replaced, the opportunity and means of accomplishing this will be cut off unless the immediate interdict now asked by him is granted. Indeed, having regard to the case of the *National Exchange Company of Glasgow* v. *The Glasgow, Kilmarnock, and Ardrossan Railway Company*, February 10, 1849, 11 D. 571, it may well be questioned whether a suspension and interdict is a suitable or competent process for obtaining redress against misappropriation. In that case, the Lord Justice-Clerk (HOPE) observed—'We are now beginning entirely to lose sight of the proper object of the old Scotch remedy of interdict. It cannot be converted into a count and reckoning or a reduction of the acts of separate bodies. It is not the proper process to seek redress against misapplication of funds, which it is said the parties discovered after having become shareholders. What sort of a process would this become if shareholders were to be entitled to go over all the expenditure of the company, and to show that there were improper and incompetent items of discharge? If there is redress required, that is open to them in a count and reckoning.' So accordingly, as the Lord Ordinary indicated in the explanatory note to his interlocutor recalling the interdict, he is inclined to think that in the present instance some additional or other form of process will not unlikely be found to be necessary in order to have a ratification of the past transactions and accounts of the company carried into effect, should that be desired and insisted for by any one having the requisite title and interest.

"In the meantime, the Lord Ordinary can see no sufficient cause for granting the prayer of the complainer's note. And it is not unimportant to observe that neither now nor in his note of suspension and interdict does the complainer offer caution or in any way undertake to be answerable for the injury and damage that might be occasioned by the granting of the interdict asked by him. In the English case of *Bloxam*, referred to in the Lord Ordinary's former note, which was the only authority cited by the complainer at the recent debate, the Vice-Chancellor, while he granted an interlocutory injunction, added to his deliverance to that effect—'The plaintiff to undertake damages.'—Weekly Notes, No. 6, issued 8th February, last, p. 37-8.

"The Lord Ordinary may add that he has perused the additional or supplemental note lodged by the complainer, but it is obvious that he cannot deal in any way with the alleged breach of interdict therein referred to, and he is unable to see how it affects the only question which he has disposed of."

At the adjourned meeting, held on 14th April, the proposed dividend was declared, payable on 25th April.

On 21st May counsel were heard on the reclaiming note, the prayer of which was "to recall and alter the said interlocutor of the Lord Ordinary, in so far as his Lordship has recalled the interdict formerly granted; and to remit to the Lord Ordinary to interdict, prohibit, and discharge the respondents from declaring or paying any dividend or dividends on the ordinary stocks or shares of the Caledonian Railway Company for the half-year ending 31st January 1868, and from carrying any sum to the credit of the revenue of the half-year ending 31st July 1868; and also to interdict, prohibit, and discharge the respondents from applying the sums of money raised, or to be raised, in virtue of the powers conferred by the Solway Junction Railway Act 1865, the Callander and Oban Railway Act 1865, and the Caledonian Railway Forfarshire Works Act 1867, or any part of said sums, in or towards payment of any dividend or dividends on the stocks or shares of the said Caledonian Railway Company, and from placing the said sums, or any part thereof, to revenue account, and from applying the said sums, or any part thereof, otherwise than for the purposes specified in the said several Acts respectively; or to do otherwise in the premises as to your Lordships shall seem proper."

LAMOND (with him CLARK and GIFFORD) for reclaimer.

YOUNG, WATSON and JOHNSTON, for respondents, were not called on.

LORD PRESIDENT—I am very clearly of opinion that this reclaiming note ought to be refused. It prays for interim interdict (1) against [*read first branch of prayer*]. When the note was originally presented to the Lord Ordinary on the Bills, that dividend had not been paid, and I suppose the sum intended to afford that dividend had not been carried to the credit of the revenue for that half-year. In these circumstances, it was a quite fair question for the Lord Ordinary to consider whether, in passing this note, he ought to grant interim interdict. He came to the conclusion, after hearing parties fully on the matter, that it was not proper to grant interim interdict at that stage, and accordingly he passed the note, and recalled the interdict formerly granted by Lord Barcaple before answers were lodged. The effect of recalling that interim interdict, followed by his Lordship's refusal of the application to prevent the issue of the certificate, was to enable the company at the adjourned meeting to do the very thing against which the interim interdict was granted. The thing was done, the sum was carried to revenue, a dividend was declared, and has been paid, or is in the course of being paid. In these circumstances, this reclaiming note asks us to grant this interdict *ad interim* against giving that which is already done. I must say that so far as I can recall my own experience, I not only know of no such case as granting interim interdict against what is already done, but I don't think such a thing ever came before the Court. There is no doubt this peculiarity in suspension and interdict, that when a case is dealt with under a passed note, at the end of the case altogether, the thing intended to be interdicted may, in the meantime, have been done, and the complainer may be entitled to a judgment which, among other things, gives him perpetual interdict against that thing; but that is a final judgment on the merits of the case, and that is merely the form assumed in consequence of the nature of the judgment. But the thing to be done here is to make an interim order regulating the possession in the meantime, it may be for this day, or week, and it may be to be altered to-morrow. That is not a judgment in a cause, but something which is expedient and proper for the time. Such a thing is to take immediate effect, and an interim order only is granted, for immediate operation, but the interim order we are asked to grant could have no operation at all. I think, therefore, this Court never has done, and never will do, what is here asked.

As to the other question, I don't think there is any difficulty. It may be true that the administration of this company may have been marked by irregularities in time past by not sufficiently dis-

tinguishing the revenue and capital account. That would be a long inquiry to enter into in such a question, what has been the conduct of the company. The present question is, whether certain funds, amounting to £520,000, raised under three different Acts of Parliament, are going to be misappropriated by the directors, and whether, therefore, it is necessary to prevent them by interim interdict from doing so. The complainer says—You have been guilty of so many irregularities that it is probable that you will do it. The respondents say—The only thing in reference to this fund is easily explained. A portion has been credited to revenue, but that is for the purpose of replacing revenue that has been lent to capital. The parties are therefore at variance as to what has been done, and all I can say is, that I don't see sufficient reason to think that the company are going to commit the illegal act complained of. On the whole, I am for refusing the reclaiming note.

Lord Deas—The whole question is as to interim interdict. That question is raised by a shareholder holding £500 of stock. There are other shareholders who hold stock to the amount of twenty millions, and it is obvious that their interests are very deeply concerned in the matter. However small may be the interest of the complainer, he is entitled to have it protected, and if he had offered caution to the holders of the twenty millions for the injury they might sustain through the granting of the interdict, that would have been a circumstance that would have entitled him to very great attention. But he offers no caution at all, and the consequence is that if he gets his interim interdict, the other shareholders have nothing to rely on but his personal responsibility. On the other hand, the company say they are ready to give him caution for any injury he may sustain through refusal of the interdict. He does not think it worth his while to accept that, being satisfied no doubt that the company is responsible without caution. This is not immaterial in the present case, and it would require a very strong *prima facie* case to entitle him to interim interdict. I entirely concur with your Lordship, and therefore I don't think it necessary to go into the details of the case. I shall only say that there is no strong case stated here by the complainer for our granting interim interdict, which might be attended with such serious consequences to the holders of the twenty millions of stock, while he remained perfectly safe. What right he may have, he may vindicate by other modes of procedure. This is a summary process, and is not his only remedy. He may bring a declarator, or he may adopt some other form of procedure, but I think he has not stated such a case as would entitle him to the remedy which he now asks.

Lord Ardmillan—I am of the same opinion. This is simply a question of interim interdict. The interposition of this court by way of interim interdict, at the instance of one shareholder, is a matter of extreme delicacy, and is only to be sanctioned in cases of necessity. It is a valuable part of our law that the Court has power to grant interim interdict, but that is only granted for the purpose of preserving existing rights until the question is fairly tried. I quite agree with your Lordship in thinking that there is no case in which interim interdict has been granted against a proceeding which has been completed. There is neither reason nor authority for such a thing.

The second part of the claim stands on a different footing. My view is that parties are widely at issue as to the facts with regard to the conduct of the company, and we have no sufficient ground on which we are called upon to stop the proceedings of the company at the instance of a gentleman who offers no caution, and declines the caution offered by the other party. That is a very important circumstance in the case. On the whole matter I am for adhering.

Lord Curriehill declined.

Agent for Complainer—Wm. Mitchell, S.S.C.

Agents for Respondents—Hope & Mackay, W.S.

Thursday, May 21.

A., PETITIONER.

Expenses—Husband and Wife—Proof. In an action of divorce, the Court, on the petition of the pursuer, before the calling of the summons, granted commission to be executed in London or Liverpool for examining a witness about to go abroad; and, on the motion of the wife, defender, awarded her £10 of expenses for attending the examination.

A. brought an action of divorce against his wife, and, before the summons was called, he petitioned for a commission to examine an important witness, who was presently resident in London or Liverpool, and was about to go abroad. He alleged that the witness could not attend in Edinburgh, and craved his appointment of a commissioner in London and in Liverpool.

Fraser for petitioner.

Trayner, for respondent, did not object to the commission being granted, but asked an award of expenses to enable the respondent to attend at the commission.

The Court awarded £10 of expenses, and appointed the petitioner to give three days' intimation of the proposed examination of the witness to the respondent and co-respondent.

Agent for Petitioner—J. S. Darling, W.S.

Agents for Respondents—Duncan & Dewar, W.S.

Thursday, May 21.

FLEEMING *v.* HOWDEN.

Property—Entail—Superiority—Reservation—Mines and Minerals—20 Geo. II., c. 51—Prescription. In 1753 an entailed proprietor granted a feucharter, reserving minerals. In 1811, under 20 Geo. II., c. 51, the vassal obtained a disposition of the superiority of his lands in usual style. *Held* that this deed did not convey the minerals, there being neither intention on the part of the granter, nor authority under the Act, to convey anything but the superiority, but that the minerals remained with the heir of entail as a separate property.

In 1857 Lieutenant-Colonel John Fleeming of Biggar and Cumbernauld, heir of entail in possession of the earldom of Wigton and barony of Cumbernauld, brought this action against the Right Honourable John Lord Elphinston, concluding (1) for declarator that all the mines and minerals, excepting stone and lime, in the defender's lands of Auchinkilns, Thorn, and Chapelton, part of the earldom of Wigton, lordship and barony of Cum-