

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 differ-

ent 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 feu-charter, 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 grantor, 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-