to try Scotch cases, but nothing could be more anomalous or indecent than for one Court in the United Kingdom to enquire whether another Court similarly constituted had overstepped its jurisdiction. Such a proceeding would end in a stoppage altogether. We are bound to assume that the Court did act within its jurisdiction. The party might have appeared and objected to the jurisdiction of the Court, and if not satisfied with its finding, it seems he had two appeals—one to the Lord Justices, and another to the House of Lords. It was therefore quite unnecessary for him to come here. I am clearly of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD DEAS—The leading plea here is, that we ought to enquire whether this party was subject to the jurisdiction of an English Court which pronounced an adjudication of bankruptcy against him. I agree with your Lordship and the Lord Ordinary that, for the reasons you have assigned, we cannot do any such thing. As regards the other points, I can see nothing in this record which would entitle us to withdraw this bankrupt from the jurisdiction of the English Court.

LORD ARDMILLAN—I agree with your Lordships. This is a very important question, and it is of very great importance that the views expressed by your Lordship in the chair in connection with it should be known.

LORD KINLOCH—The case before the Court is not in the least that of a foreign decree involving the interests of a single creditor and single debtor. The objection here is to judicial proceedings in England in issuing an adjudication of bankruptcy, or what we would call a sequestration. I cannot see that in a multiplepoinding in Scotland we are entitled, at the instance of the bankrupt, to inquire into such proceedings in such a way as virtually to to set them aside altogether. Even if the objection were competent, I do not think that there is a relevant case disclosed on record. Domicile in Scotland is by itself nothing. Cathcart lived in England, and contracted debts there; he then left the country, and has since remained on the Continent to avoid his creditors. There is nothing on the record to show that this is not legally sufficient to warrant in England an adjudication in bankruptcy.

The Lord Ordinary's interlocutor unanimously adhered to.

Agents for Reclaimer—A. & A. Campbell, W.S.
Agents for Respondent (Cook)—J. A. Campbell & Lamond, W.S.

Tuesday, November 22.

ROSS AND DICK (DICK'S TRUSTEES) *v.* HANNAH.

Process—Suspension—Accounting—Trustee—Expenses. Trustees having borrowed money on a bond in their capacity of trustees, and having been charged on said bond, *held*—in a suspension of the charge by them, on the ground that they had no trust-funds in their hands—that it was competent in that process to sustain such objections for the charger to the correctness of entries in the state of funds for the trustees (which had been lodged by order of the Court), as could instantly be verified, and appeared *ex facie* of the state. Remarked that there might be objections which could not be disposed of in such a process, in consequence of their rendering a general accounting necessary. Expenses modified, in consequence of the charger having at first indicated an intention of proceeding against the trustees as individuals.

This was a suspension by John B. Ross, writer, Girvan, and John Dick, gamekeeper, Dush Lodge, as trustees of Robert Dick, sometime innkeeper in Dailly, of a charge under letters of horning at the instance of Robert Hannah, merchant, Girvan, and proceeding upon a bond and disposition in security granted by the complainers as trustees aforesaid. The complainers were trustees under a trust-disposition, executed by the said Robert Dick in June 1850, which trust-disposition was for behoof of the truster's creditors, and which gave the trustees full power to borrow money for certain purposes therein stated. In accordance with these powers, the complainers, in January 1851, borrowed £320, granting therefor, expressly in their characters as trustees, a heritable bond and disposition in security in the usual form in favour of the lender. This bond was subsequently acquired by the present respondent by assignation from the original creditor. The complainers duly paid interest on the said bond till May 1862, from which time, in consequence of failure of trust-funds, with a slight exception, they have paid nothing. The charger being desirous of recovering the principal sum and interest due under the bond, raised letters of horning against the complainers, against the charge following on which the present suspension was raised, the complainers pleading that they had no trust-funds in their hands. The note was passed without caution, in consequence of the charger having indicated an intention of proceeding against the complainers as individuals, and as being personally liable for the said debt, on the authority of *Gordon* v. *Campbell*, 1 Bell's App., p. 428. In consequence of the complainers' plea that they had no trust-funds in their hands, the Lord Ordinary ordered them to give in a state showing the position of the trust-funds in their hands at the date of the charge, a course followed in *White* v. *Wilson*, 2d March 1843, 5 D., 763. The complainers in their state brought out a balance in their favour, but the charger having stated that there were, *ex facie* of the state, entries the incorrectness of which could be instantly proved, the Lord Ordinary allowed objections for the charger to be lodged. Upon a consideration of the note, state, and objections, the Lord Ordinary sustained the 1st, 2d, 6th, and 7th objections for the charger, and in consequence thereof found that the complainers had in their hands £120, 10s. 8d. of trust-funds available *pro tanto* in payment of the bond charged on, and to that extent repelled the reasons of suspension, and found the letters orderly proceeded. But, in consequence of the charger having indicated an intention of proceeding against the complainers as individuals, and only departing from such intention when the case came into Court, found the complainers liable in modified expenses only. The objections for the charger, which the Lord Ordinary repelled, were, he stated, of such a nature as not to be relevant for enquiry, except in a general accounting.

The complainers reclaimed.

CRICHTON, for them, argued that a suspension

being a summary precess was not a process of such a nature as to afford room for such an accounting as was necessary in this case, and consequently the charge should be suspended, leaving it to the charger to bring a count and reckoning or such other process as would allow him into an accounting.

MILLAR, Q.C., and TRAYNER, for the respondent, were not called upon.

At advising—

LORD PRESIDENT—The result of the Lord Ordinary's interlocutor is, that he finds that there is a sum of £120, 10s. 8d. of trust-funds in the trustee's hands to go towards paying this bond. I can see no objection to this, and think that his finding should be adhered to.

LORD DEAS concurred.

LORD ARDMILLAN—The charger was not a creditor at the time of the execution of the trust-deed, he is only a creditor in consequence of an obligation by the trustees, and therefore these trustees must be liable in a question between their own creditor and themselves. As between the trustees who granted the bond and the creditor under the bond, there can be no doubt that they are liable to the extent of the trust-funds in their hands. As regards the accounting, the objection to such a proceeding generally arises on the other side—the suspender usually wishes to get into a question of accounting, and the Court often refuses to allow him to do so; but when the charger makes objections to a state, in order to show that there are funds to meet his claim, I think it would be unfair not to sift them if practicable. The Lord Ordinary is right here, I think.

LORD KINLOCH—It is a question with me whether the Lord Ordinary may not have dealt too favourably with the suspenders. There can be no doubt that trustees, as such, can be charged under a bond; and if they suspend that charge, the question is raised, and raised competently in the suspension, whether they have trust-funds in their hands sufficient to meet the charge. The Lord Ordinary has said that there may be objections which ought not to be taken up in such an action as this; but that there are here some objections which show at once that there are trust-funds in the hands of the trustees; and so he finds that there are funds which will go so far towards paying the amount in the charge, and he decerns accordingly. I think his course unobjectionable.

Lord Ordinary's interlocutor unanimously adhered to.

Agents for Complainers and Reclaimers—Duncan, Dewar & Black, W.S.

Agents for Respondent—M'Ewen & Carment, W.S.

Tuesday, November 22.

FOTHRINGHAM *v.* OFFICERS OF STATE AND OTHERS.

Teinds—Valuation—Constant Rent—Lease—Agreement. In a valuation of teinds, where the stock and teind are valued jointly,—*Held* that where the lands are let under an existing lease, the actual rent paid is "the constant rent" or criterion fixed by statute, and the practice of the court, for valuing the teinds: but that the rule does admit of exceptions.

Circumstances in which the existing lease had been modified by an after agreement, so as to reduce the rent from £370 to £300, but the Court held that this was not enough to take the case out of the existing rule, they being satisfied of the *bona fides* of parties in making the reduction, and that the reduced rent, and not the former one, was the fair annual value of the lands.

This was a summons of valuation of teinds at the instance of Mrs Marion Scrymsoure Fothringham, of Tealing, in Forfarshire, against the Crown, as titular of teinds and patron of the parish of Tealing, and against the Rev. William Elder, minister of the said parish, and concluding that a valuation of the teinds, both parsonage and vicarage, of all and whole the Kirklands, called the Priestown of Tealing, forming part of the barony and parish of Tealing, ought and should be led and deduced in terms of the several acts of parliament thereanent, at the instance of the pursuer against the said defenders; and that a constant and fixed yearly duty ought and should be determined . . . to be the constant, just, and true value of the teinds, parsonage, and vicarage, of the said lands and others, to be paid in place thereof in all time coming.

Mrs Fothringham is heiress of entail in possession of the lands and barony of Tealing, of which the Priestoun of Tealing forms a part. It is described in the titles as follows: "All and whole the Kirklands, called the Priestoun of Tealing, with the whole teind sheaves, great and small, as well parsonage as vicarage, which were never in use to be separated from the stock lying within the parish and sheriffdom foresaid." These lands of Priestoun were always until very lately considered to be exempt from teind, as held *cum decimis inclusis.* They were so dealt with in a final locality of the parish in 1821, and consequently the teinds of the lands have never yet been valued. The teinds of the parish not being entirely exhausted, the minister in 1865 brought an augmentation, which is still in dependence. It was then found that there was an error in supposing the Priestoun of Tealing to be held *cum decimis inclusis,* and accordingly the minister brought a reduction of the locality of 1821, in which he succeeded (see 6 Law Reporter, 220). The lands being now therefore liable in teind, the proprietrix became desirous of having the teind valued, and accordingly brought this action.

The said Kirklands of Priestoun consist of only one farm, which was let, in 1856, on a nineteen years' lease to George Anderson. The rent stipulated was £370. This rent was paid for some years, but on the representations of the tenant, and advice of her agents, Mrs Fothringham in 1865 reduced the rent to £300. This fresh agreement was not reduced to writing till 1869, when it was embodied in a minute of agreement, which declared "that, except only as regards the amount of rent, the original lease should remain good and effectual in every respect." The pursuer accordingly represented that the constant rent of the lands in question was £300, which, according to the rule laid down, that the true and just rate of teinds shall be the fifth part of the constant rent which each land pays in stock and teind, where the same are valued jointly, would give £60 per annum of teind.