themselves of their remedy.

The Court adhered.

The LORD PRESIDENT and LORD DEAS were absent.

Counsel for Pursuers (Reclaimers)—Pearson—Dickson. Agents—Pearson, Robertson, &Finlay, W.S.

Counsel for Defenders (Respondents)—Comrie Thomson—Wallace. Agents—Welsh & Forbes, S.S.C.

Friday, January 23.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

STEUART *v.* REE.

Process—Citation — Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. c* 77), *sec.* 3.

Delivery of a registered letter, containing the copy of the writ to be served, to a servant of the person on whom service is to be made, who calls at the post-office for it by his master's authority, and grants a receipt, constitutes a valid citation under the Citation Amendment Act 1882.

Section 3 of the Citation Amendment (Scotland) Act 1882 provides—"In any civil action or proceeding in any court, before any person or body of persons having by law power to cite parties or witnesses, any summons or warrant of citation of a person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland by an officer of the court from which such summons, warrant, or judicial intimation was issued, or other officer who, according to the present law and practice, might lawfully execute the same, or by an enrolled law-agent, by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address, if it continues to be his legal domicile or proper place of citation, . . . a registered letter by post containing the copy of the summons or petition, or other document required by law in the particular case to be served, with the proper citation or notice subjoined thereto, . . . and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business, or at his last known address, if it continues to be his legal domicile or proper place of citation."

On 2d July 1884 the Rev. Stephen Ree, minister of the parish of Boharm in Banffshire, obtained a decree in the Sheriff Court there against Andrew Steuart, Esq. of Auchlunkart, for (1st) £11, 6s. 7d., being fiars' prices of victual stipend due to him for crop and year 1883, and payable to him by the defender on 3d March 1884 in terms of a decree of augmentation, &c., of 1818; (2d) £32, 18s. 10d., being the half-yearly money stipend payable at Whitsunday 1884; and (3d) £3, 10s. 3d. of expenses of process. On this decree he charged Steuart, who suspended the charge in the Bill Chamber.

The material statements of the complainer and the answers of the respondent were as follows:—"(Stat. 2) The alleged decree, of date 2d July 1884, in the Sheriff Court of Banffshire, which the complainer has been charged to implement, was not preceded by the service on him of any petition for such decree, either by an officer of Court or by citation in terms of the Citation Amendment (Scotland) Act 1882. No registered letter by post containing copy of the alleged petition was received by the complainer, or anyone authorised on his behalf, and if any acknowledgment of receipt is alleged to have been granted by the complainer or anyone authorised by him, such acknowledgment is false, the complainer having granted no such receipt, and no authority having been granted by him to anyone to act for him in so acknowledging. The counter statement is denied. (Ans. 2) Denied. Explained that the petition at respondent's instance against the complainer was served under the provisions of the Citation Act of 1882 by the respondent's agent, Mr John Grant Fleming, solicitor, Keith, on 3d June 1884. An execution of service in terms of said Act was endorsed on the petition by Mr Fleming, and the usual certificate of registration produced to the Court along with said petition. Thereafter the decree sought to be suspended was pronounced, and upon 17th July, payment not having been made of the sums contained therein, the charge also sought to be suspended was given. The whole proceedings were orderly and regular. (Stat. 3) The petition on which the decree charged on bears to proceed was not duly served. The registered letter required by the Citation Act was not left or tendered at the complainer's known residence in terms of the said Act. The complainer has endeavoured through the post-office to trace the registered letter now in question, and he finds it alleged to have been left with his gamekeeper (Falconer), or his said gamekeeper's son, but neither of these parties was a house-servant, nor in any way entitled to receive a letter for the complainer, and the same was not delivered to nor seen by him. The complainer desires an opportunity of establishing these averments. (Ans. 3) Denied. Explained that, by instructions from suspender, James Falconer rode regularly to the post-office, Blackhillock, for the Auchlunkart letters, and in the case of registered letters, granted the usual receipts on suspender's behalf. The receipt for the citation in question is signed by the said James Falconer. The registered letter containing the same was duly taken by him to the suspender's residence at Auchlunkart, was left there, and was received by suspender. The decree and proceedings founded on are referred to for their terms. Explained that the debt contained in said decree is most justly due. Explained that the suspender has taken no proceedings under the provisions of the Sheriff Court Acts for having himself reponed against said decree."

The complainer pleaded—"(1) The alleged decree being inept, in respect the same was not preceded by legal service on the complainer of any petition for payment of the sums alleged to be due, the complainer is entitled to have the charge suspended. (2) The registered letter required under the Citation Act not having been left or tendered at the complainer's known residence in terms of that Act, the complainer ought

to have opportunity allowed to him to instruct this, and the charge should be suspended."

The respondent pleaded—"(1) No relevant case for suspension. (2) The sums contained in said decree being justly due by complainer to respondent, the suspension should be refused, with expenses. (3) The whole proceedings having been orderly and regular, and the complainer's averments being unfounded in fact and in law, the suspension should be refused, with expenses."

The note having been passed, the process was marked to Lord M'Laren. His Lordship refused the suspension, and found the charge orderly proceeded.

The complainer reclaimed.

At advising—

LORD YOUNG—I think there can be no question that the Lord Ordinary's decision is right here, and it is not necessary to say anything even in explanation of it. It is ridiculous to say that while if a registered letter is delivered to the person to whom it is addressed, and he grants a receipt, that is sufficient citation under the Act, yet if it is delivered to a man whom he sends for it, and he grants a receipt for it, that is not sufficient citation. It is a question here about a citation in what might, as far as the value of it goes, as well have been a small-debt action in a Small Debt Court. The Act provides that a citation made by registered letter "shall constitute a legal and valid citation, unless the parties cited shall prove that such letter was not left or tendered at his known residence or place of business." That is not quite accurate language, but it does not mean that if a small-debt citation is proved in the Court of Session or the House of Lords not to have been tendered at the person's known residence or place of business it shall be invalid. It means proved in the Court from which the citation flows. If the party says he was not cited he may go the Sheriff and prove that to his satisfaction, but I repeat that "proved" does not mean proved here, but proved there.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court adhered.

Counsel for Complainer—Scott. Agents—Maitland & Lyon, W.S.

Counsel for Respondent—Shaw. Agent—Geo. Andrew, S.S.C.

LANDS VALUATION COURT.

Tuesday, January 27.

(Before Lord Lee and Lord Fraser.)

GOSNELL AND THE MARR TYPEFOUNDING COMPANY (LIMITED).

(See *ante*, vol. xx. p. 431 (10 R. 665), and vol. xxi. p. 396 (11 R. 563).

Valuation Cases—Lease—Annual Value—Consideration other than Rent—Power to Build.

Premises were let to a tenant under a lease for twenty-one years, with power to him to erect buildings additional to those already on the ground, under the conditions that these buildings were to be of a stipulated value, and to be erected within a certain time, and to be the property of the landlord. The tenant erected valuable buildings upon the ground under this lease. *Held* that these stipulations were equivalent to an obligation on the tenant to build, that such an obligation was a consideration other than the rent conditioned in the lease, and that therefore the assessor was entitled to value the subjects apart altogether from the conditions of the lease.

At a meeting of the Magistrates and Town Council of the burgh of Edinburgh for the purpose of disposing of appeals against the assessor's valuations of property in the burgh for 1884-85, an appeal was made at the instance of both proprietrix and tenants against the valuation of £180 put upon the premises known as Whiteford House, Canongate. Mrs Gosnell, residing at Reigate, Surrey, was the proprietrix, and the Marr Typefounding Company (Limited) were the tenants. The lease stated that the subjects were let to the company for twenty-one years from Whitsunday 1878 "in consideration of" the rent of £120. Under this lease the company had "power and liberty" (for the purpose of the business only) to erect such buildings in addition to those already on the ground "as they may see fit;" that the buildings so to be erected "shall be erected within two years" from the date of the lease, be kept up by the tenant, and left in good condition at the end of the lease, and be the property of the proprietrix, and be of the value of £500. No further rent was to be paid for these buildings.

In virtue of this power given in the lease the tenants had erected buildings on the ground of the annual value of £60.

On the ground that this power to build was truly an obligation to build, and was a consideration other than the rent conditioned in the lease, in the sense of the 6th clause of the Lands Valuation (Scotland) Act 1854, the assessor had disregarded the lease, and valuing the property independently, had fixed it at the said sum of £180.

The Magistrates confirmed the valuation.

Mrs Gosnell and the Marr Typefounding Company took a Case.

Argued for the appellants—The assessor was bound to take the rent conditioned in the lease as the fair annual value of the subjects. There was