bald's predecessor thought fit at a much later date in the present century to obtain a valuation of these lands in their high condition, and he obtained a decree of valuation, and if that decree of the High Commissioners is to be the rule, then there is free teind for the minister's stipend to some extent at last.

Without prejudging the question, I think there is a great deal to be said for this, that when there is a decree of the High Commissioners, that must be the rule of the value of the teind, notwithstanding any previous valuation of the Sub-Commissioners. That is all an open question for consideration.

In this state of the matter I am for allowing this augmentation process to proceed.

Lord Mure, Lord Shand, Lord Rutherfurd Clark, and Lord Adam concurred.

The Court granted the augmentation, leaving the various points raised to be determined in the locality.

Counsel for the Minister—Graham Murray. Agents—Mylne & Campbell, W.S.

Counsel for the Heritors—Low. Agent—F. J. Martin, W.S.

Tuesday, February 23.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

FARQUHAR *v.* FARQUHAR.

Proof—Reference to Oath.

Testamentary trustees raised an action of multiplepoinding for the distribution of the deceased's estate, and were discharged on consigning in Court the fund in their hands. The only claimants upon this fund were a legatee for £100 and the residuary legatee. The legatee for £100 refused to take payment of his legacy until a claim he had against the deceased was admitted and paid. This claim was founded upon a prescribed account. *Held* that the constitution and resting-owing of the debt could only be referred to the oath of the residuary legatee, the other claimant, and not to the oath of the trustees.

This action of multiplepoinding was raised in the Sheriff Court at Banff by the Rev. J. R. Leslie and others, trustees of the deceased John Farquhar, for the purpose of distributing the balance of the moveable estate belonging to the deceased, which remained in their hands after paying all debts and legacies, with the exception of a legacy of £100 left by the truster to his brother George Farquhar. One claimant in the action was George Farquhar, who made a claim against the estate for £104, 11s. for services rendered to the deceased conform to account produced, and another claim for £100, being cash deposited with him for which the deceased had given an unstamped promissory-note. He refused to accept payment of the legacy until these claims were admitted and paid. The other claimant was Jessie Farquhar, the daughter of the deceased, who was the residuary legatee. She pleaded that the account of £104, 11s. for services rendered was prescribed.

On 4th February 1885 the Sheriff-Substitute (Scott-Moncrieff) pronounced an interlocutor holding the claimants confessed on the fund *in medio*, and exonering the pursuers on consignation of the balance in their hands.

On 15th June the Sheriff-Substitute pronounced an interlocutor by which he found that the claimant George Farquhar no longer insisted in his claim so far as founded on the promissory-note, and allowed George Farquhar a proof of his averments relating to the account. Jessie Farquhar, the other claimant, appealed to the Court of Session, and the Court on 16th July 1885 pronounced this interlocutor:—"The Lords having heard counsel for the parties on the appeal of the claimant Jessie Farquhar against the interlocutor of the Sheriff-Substitute of 15th June 1885, recal the said interlocutor, except in so far it disposes of the claim on the unstamped promissory-note; *quoad ultra* sustain the plea founded on the triennial prescription, and remit the cause to the Sheriff to allow the claimant George Farquhar a proof by the oath of party of the constitution and existence of the debt he claims."

George Farquhar then lodged a minute of reference by which he referred the constitution and existence of the debt to the oath of John Farquhar's trustees and executors.

The Sheriff-Substitute on 28th October pronounced this interlocutor:—"Having heard parties' procurators upon the minute of reference lodged by the claimant George Farquhar, refuses to sustain said minute: Finds that the party by whose oath the claimant, the said George Farquhar, has been allowed a proof in terms of the interlocutor of the First Division of the Court of Session, of date the 16th day of July 1885, is Jessie Farquhar, the other claimant, and allows the said George Farquhar to lodge a minute of reference to her oath, if so advised, within ten days from this date: Further, on this question grants leave to appeal.

"*Note.*—At present I have simply to give effect to the interlocutor of the Supreme Court which allows George Farquhar proof by the oath of party. Unfortunately the party is not named, and a lengthy debate has been the consequence of this omission. But I cannot doubt that by this expression is meant Jessie Farquhar, who is the party taking the plea of prescription, and maintaining that this account of which George Farquhar seeks payment is not due. It is true that the trustees and executors are the proper representatives of the deceased John Farquhar, the alleged debtor, and it seems to me that they were the parties who ought to have determined whether this account was due or not, and either paid it or resisted payment accordingly. But it is too late now to revive a plea which would strike at the competency of this action of multiplepoinding. The trustees have been allowed to lodge the funds and retire, leaving this question in dispute to be fought out between the two claimants."

On appeal the Sheriff sisted process to enable the claimant George Farquhar to constitute his debt.

The claimant Jessie Farquhar then appealed to the Court of Session, and argued that the Sheriff-Substitute had taken the proper course. The respondent admitted that he could not maintain the Sheriff's judgment, but argued that the reference should be to the oath of the trustees. The party to whose oath the question should be referred was the debtor in the obligation. There was no case in which a reference had been sustained to the oath of a person who was not the debtor or the representatives of the debtor—*Cullen* v. *Smeal*, July 12, 1853, 15 D. 868, 882; *Young, Potter, & Company* v. *Playfair*, 1802, M. 12,486. His opponents were the trustees. [LORD PRESIDENT—No. They were. But you have allowed them to be exonered.] Besides, the oath of Jessie Farquhar would be useless, as she knew nothing about the debt. [LORD SHAND—Quite so. But reference to oath is a privilege, and if the debtor is dead it very often is useless.]

The case was continued to allow the respondent to lodge a minute of reference to the oath of Jessie Farquhar if so advised. A minute of reference to her oath was lodged, and the case was then advised.

At advising—

LORD PRESIDENT—I must say that I think that this is a very clear case. The multiplepoinding was raised by the trustees of the late John Farquhar, as holders of the fund *in medio*, which consisted of the balance of the moveable estate of the deceased; and upon 4th February 1885 the Sheriff-Substitute allowed the minute tendered by the claimants to be received and marked, and as the parties to the minute took no objection to the condescendence of the fund, he held them as confessed, and decerned.

Upon 12th February consignation was made and the two claimants to the fund joined issue. The interlocutor which was pronounced in this Court upon 16th July 1885 was to this effect—"Having heard counsel for the parties on the appeal of the claimant Jessie Farquhar against the interlocutor of the Sheriff-Substitute of 15th June 1885, recal the said interlocutor, except in so far as it disposes of the claim on the unstamped promissory-note; *quoad ultra* sustain the plea founded on the triennial prescription; and remit the cause to the Sheriff to allow the claimant George Farquhar a proof by the oath of party of the constituton and existence of the debt he claims."

It appears that the name of the party, though in the draft interlocutor, was *per incuriam* omitted in writing it out; and the Sheriff-Substitute seems to have had some doubts whether the reference was to the oath of Jessie Farquhar, and he allowed George Farquhar to lodge a minute of reference to her oath, if so advised, within ten days from the date of his interlocutor; while the Sheriff when the case came before him, sisted process to allow George Farquhar to constitute his debt.

Now, I cannot see what benefit could accrue from this procedure, because the trustees have been discharged on consignation and exonered.

The case therefore comes back to this—as George Farquhar has not availed himself of the minute of reference, we must recal the Sheriff-Substitute's interlocutor, sisting process, and George Farquhar can of new put in a minute of reference to oath if he is so advised.

LORD SHAND—Even if the trustees had not been exonered and discharged in this case, it would not in my opinion have made any difference.

Jessie Farquhar is the person solely interested in this estate, and to allow a proof by oath of the trustees would be I think to let in parole evidence.

If there is to be a reference to oath at all, it must be to the oath of Jessie Farquhar alone.

LORD ADAM concurred.

LORD MURE was absent on circuit.

The Court pronounced the following interlocutor:—

> Recal the interlocutor of the Sheriff of 9th January last: Adhere to interlocutor of Sheriff-Substitute of 28th October last, except in so far as it allows the respondent to lodge a minute of reference to the appellant's oath, if so advised, within ten days from its date: Sustain the minute of reference to the appellant's oath, and ordain her to depone thereupon, and answer all pertinent interrogatories that shall be put to her thereanent."

Counsel for Appellant—W. Campbell. Agent—William Considine, S.S.C.

Counsel for Respondent—Low. Agent—Alexander Morison, S.S.C.

Wednesday, February 24.

FIRST DIVISION.

[Lord Fraser, Ordinary.

WALKER AND ANOTHER *v.* M'KNIGHT AND OTHERS.

Lease—Landlord and Tenant—Clause excluding Assignees—Lease to a Company—Sequestration of Firm—Removing.

> A lessee of a mineral field let it to the partners of a firm "as trustees for the said company, and the partners present and future thereof," excluding assignees and sub-tenants without the landlord's written consent. The estates of the firm were sequestrated, and the property of the subjects was sold by heritable creditors of the landlord, the purchaser from whom refused to accept as tenant any assignees of the firm who were tenants. *Held* (1) that these purchasers were entitled to remove the partners of the bankrupt firm, because the partnership came to an end by the sequestration, and (2) that tenants whose lease had thus been brought to an end had, on the authority of *Hepburn* v. *Scott*, 14th June 1876, 3 R. 816, no claim for meliorations on the subjects.

John M'Knight was proprietor of a mineral field in Ayrshire named Plann. By minute of lease between himself on the one part, and himself and W. C. M'Knight, "sole partners of John M'Knight & Company," as trustees for that company and partners present and future thereof on the other part, he let the coal (under a certain exception) and the fireclay and fireclay works, with machinery and plant, for twenty-five years