

end of the year. On that footing I am prepared to concur with your Lordships in refusing this reclaiming-note.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Crabb Watt—T. B. Morison. Agents—Donaldson & Nisbet, S.S.C.

Counsel for the Defenders and Respondents—Guthrie, K.C.—Cooper. Agent—Thomas Hunter, W.S.

Saturday, February 21.

FIRST DIVISION.

PENDER'S TRUSTEES, PETITIONERS.

Trust—Nobile officium—Petition by Trustees on English Trust for Authority to Feu and Grant Mineral Leases in Scotland.

Trustees under an English trust, having obtained the sanction of the High Court of Justice in England, petitioned the Court, in the exercise of its *nobile officium*, for authority to feu and grant mineral leases of certain heritable property in Scotland which formed part of the trust estate. The Court granted the petition.

This was an application to the *nobile officium* of the Court by Sir John Denison-Pender and others, trustees and executors of the late Sir John Pender of 18 Arlington Street, London, and Seafield, Blackburn, and Whitehill, in the county of Linlithgow.

The prayer of the petition was in the following terms:—"To grant warrant to authorise and empower the petitioners to grant mineral leases of the minerals in the said lands of Seafield, Blackburn, and Whitehill, in the county of Linlithgow, for periods not exceeding thirty-one years, and to grant feus of the said lands or any part thereof, or otherwise and in any event to grant warrant to authorise and empower the petitioners to grant a new lease of the shale and coal in the lands of Seafield, Blackburn, and Whitehill, formerly let by the said late Sir John Pender to the Pumpherston Oil Company, Limited, in terms of" certain "missives, and to grant a feu to the School Board of the parish of Livingstone of a piece of ground not exceeding one acre in extent for the erection of a school." The petitioners did not ultimately insist in the prayer of the petition in so far as it craved authority to grant feus and mineral leases in the future.

The petition set forth that the petitioners had no express power under the last will and testament of the late Sir John Pender to grant feus or long leases; that in the administration of the trust it was desirable to grant of new mineral leases of subjects formerly leased by the truster, and also to grant a feu for the purpose of erecting the school above referred to; and that they had accordingly instituted proceedings in

the High Court of Justice in England. In these proceedings Mr Justice Swinfen Eady pronounced, on 1st December 1902, the following order:—"And the Judge being of opinion that it is expedient in the interests of beneficiaries under the said will that the trustees thereof should have power to deal with the lands of the testator in Scotland devised by the said will by granting feus thereof for building purposes, or by leasing the same and the minerals thereunder for mining purposes, in accordance in either case with the custom of the locality in which the said lands are respectively situate, and as regards any mining lease, subject to setting aside as capital money such part of the rent as is required by section 11 of the Settled Land Act 1882, and also being of opinion that by the law of England, so far as it controls the trusts of the lands devised by the said will and codicils, such feus and leases for mining purposes might be made of the said lands and minerals under the Settled Lands Acts, but the said Acts do not extend to property in Scotland: And the plaintiffs by their counsel, and the defendants Sir James Pender and Dame Marion Denison Des Voeux by their solicitor, consenting to the following order:—It is ordered that the plaintiffs Sir John Denison-Pender, Lord John Hay, and Richard Enfield, as such trustees as aforesaid, be empowered to apply at any time or from time to time to the proper Court or Courts in Scotland for all necessary relief to enable them to give effect to this direction, and particularly to obtain power and authority to enable the granting with regard to the lands in Scotland devised by and subject to the trusts of the said will of feus for building purposes, and of leases for mining purposes."

At the hearing counsel for the petitioners referred to *Allan's Trustees*, March 13, 1897, 24 R. 718, 34 S.L.R. 532.

The Court pronounced this interlocutor—

"Grant warrant and empower the petitioners to grant a new lease of the shale and coal in the lands of Seafield, Blackburn, and Whitehill, in the county of Linlithgow, formerly let by the late Sir John Pender to the Pumpherston Oil Company, and to grant a feu to the School Board of the parish of Livingstone of a piece of ground of said lands of Seafield not exceeding one acre in extent: *Quoad ultra* continue the petition and decern."

Counsel for the Petitioners—Mackenzie, K.C.—Blackburn. Agents—Murray, Beith, & Murray, W.S.