[Mor. p. 8282.]

ALEXANDER IRVING, Esq., CAPTAIN ROLLO, JAMES FRAZER, Treasurer of the Bank of Scotland, FORREST DEWAR, and JOHN DUNDAS, Trustees of the late Alexander Houstoun, Banker, Edinburgh, } *Appellants;*

Mrs. MARGARET ROLLO or HOUSTOUN, Widow of the said deceased ALEXANDER HOUSTOUN, } *Respondent.*

House of Lords, 27th July 1803.

FIAR OR LIFERENTER—BANK DIVIDENDS—BONUS.—A truster, by his testamentary trust-deed, directed the whole 144 shares held by him in the Bank of Scotland's stock, to be transferred, immediately after his death, in his wife's name in liferent, with power to her "to receive the dividends when due, or becoming due thereon." An extraordinary dividend or bonus of £1066, applicable to this stock, was made after his death; and the question made by his trustees was, that as this was a *bonus*, arising from a division of accumulated capital, and not an ordinary dividend arising from profits; and as, by the trust deed, this capital stock was assigned to them, "with "the whole dividends of profits therefrom arising;" the fee of this sum fell to them, and she was only entitled to the liferent of it. Held her entitled to the whole sum, as a dividend falling due on the bank stock of her deceased husband. Reversed in the House of Lords.

The deceased Alexander Houstoun, banker in Edinburgh, conveyed his whole means, heritable and moveable, by trust deed, to trustees for behoof of his wife, the respondent, in liferent, and his nephews and nieces, share and share alike, in fee, in the following terms: "All and whole my 144 "shares of the capital stock of the Bank of Scotland, with "the whole dividends of profit therefrom arising, burdened "with the liferent right of Mrs. Margaret Rollo, my spouse, "during all the days of her life, in case she shall survive "me, with power to my said spouse, in the event of her "surviving me, immediately on my decease, to get the "shares in the Bank of Scotland transferred in her own "name in liferent, and to appoint factors from time to time, "to receive and uplift the dividends when due, or becom-"ing due thereon, and the rents, annual-rents, or profits "arising from the other means and effects, both heritable "and moveable, hereby disponed in trust, without the "consent of my said trustees, whose entry to the manage-"ment of the funds disponed to them in trust was postpon-

1803.

IRVING, &c. v. HOUSTOUN.

" ed till her decease." A posterior clause, after constituting the trustees assignees to the heritable subjects, it is added, " And in and to the dividends of profit arising from his shares " in the Bank of Scotland, *that may fall due and be payable* " *after the decease of the longest liver of him and his said* " *spouse.*"

Dec. 1794. On Mr. Houstoun's death, the trustees accepted of the trust; and the trust-deed being laid before the directors of

Mar. 4, 1795. the bank, the following transfer of the bank stock was effected: " I do assign and transfer unto the above men- " tioned Alexander Irving, Robert Rollo, James Frazer, " Forrest Dewar, and John Dundas, or their quorum, trus- " tees of the above Alexander Houstoun deceased, in fee, " and to the above Mrs. Margaret Rollo *alias* Houstoun, his " widow, in liferent, for her liferent use only, 144,000 " pounds Scots old stock, together with 96,000 pounds Scots " of the said new or additional stock subscribed for by " him, corresponding thereto, being the said Alexander " Houstoun his whole interest in the stock of the Governor " and Company of the Bank of Scotland, with all the divi- " dends and profits that shall be ordered thereupon."

This transfer was accepted of by Mrs. Houstoun's factor, and she received payment of the *ordinary* dividends falling due on the stock.

In consequence of an *addition* made to the *capital* of the Bank of Scotland recently before his death, he had become subscriber of a number of shares of the additional stock, which was paid for by instalments or calls, of which a large proportion was due at Mr. Houstoun's death, or became due soon thereafter.

There was this clause in the trust-deed, which entitled the trustees, during his wife's life, to uplift and apply any sum that may be necessary to pay his just and lawful debts, " and also to raise and uplift from my personal funds such " sum or sums of money as from time to time may be ne- " cessary to pay up the calls that may be made by the " Bank of Scotland, in consequence of the increase of the " capital of the said bank allowed to the present proprie- " tors to be subscribed for."

There was other stock in the 3 per cent. consols which might have been sold to pay off these arrears of calls, but these being at the time very low in the market, it was arranged with Mrs. Houstoun, that these calls should just remain due as a debt to the bank, the bank charging interest therefor.

Of this date, the bank declared an *extraordinary* dividend or bonus, in the following terms:—" That an extraordinary dividend or bonus be given to proprietors holding " stock upon the 1st June next,"—" and that a sum equal " to the bonus, to be ascertained as above, falling to such " proprietors as are in arrear to the bank, on their stock account, shall be applied towards the extinction of the arrear " due by such proprietor, and that at the same time the " bonus is given and executed."

In consequence of the arrears of calls for the additional stock being still unpaid, the bank, in terms of this order, retained the bonus, or dividend, as effeiring to the stock conveyed in liferent to the respondent: Whereupon she brought the present action against the appellants for payment of £1066 as the amount thereof. In defence, the appellants stated that the dividend was not an ordinary dividend, but an extraordinary dividend, and was consequently not to be viewed as the same with ordinary dividends that are paid on bank shares, because it was not made from profits accruing on the said capital of the bank, during the year previous to its being ordered, but arose from the surplus profits above the ordinary dividends, accumulated for a number of years previous to Mr. Houstoun's death. The respondent therefore could only claim the liferent of the £1066, the capital of that sum belonging to the trustees, they going to increase the value of their shares previous to Mr. Houstoun's death.

At first the Court, 23d June 1801, sustained the defences, " to the extent of such part of the extraordinary dividend " in question as may have arisen from the undivided profits of " the stock during Mr. Houstoun's life, and remit to the " Lord Ordinary to proceed accordingly;" but, on reclaiming petition for both parties, and also answers, the Court pronounced this interlocutor:—

" Alter their interlocutor reclaimed against: Find the Dec. 1, 1801.
" pursuer (respondent), in terms of her husband's settlement " libelled on, entitled to the *extraordinary* dividend de- " clared by the Court of Proprietors of the Bank of Scot- " land on the 26th of March 1799: Find the defenders liable " in payment thereof to the pursuer, in terms of the conclu- " sions of the libel, and decern." * The appellants presented a bill of suspension of this decree, which was refused. Feb. 12, 1802.

---

* Opinions of the Judges.

June 23d, 1801.

LORD PRESIDENT CAMPBELL said, " This is a question about the

1803.

IRVING, &c. *v.* HOUSTOUN.

Against these interlocutors the present appeal was brought to the House of Lords.

Pleaded for the Appellants.—The testator, Mr. Houstoun, by his trust, conveyed to the appellants "All and whole extraordinary dividend of bank stock; and, Whether it belongs to the liferenter or the fiar? In my opinion, those undivided profits lying in the hands of the bank, make in reality a part of the capital of such partner's private fortune at his death, and, when paid up, so as to yield a yearly interest or profit,—this, and not the capital, seems now to be what the liferentrix had a right to."

LORD HERMAND.—"In my opinion, it is not stock but dividend."

LORD ARMADALE.—"I am of the same opinion."

LORD MEADOWBANK.—"I am of the same opinion."

LORD GLENLEE.—"I differ; and I am of the contrary opinion."

LORD JUSTICE CLERK.—"I am also of the contrary opinion."

LORD BALMUTO.—"I am also of the contrary opinion."

LORD POLKEMMET.—"The liferentrix is entitled only to the ordinary fruits; as exampled in woodcuttings and grassums."

LORD BANNATYNE.—"It is profit, and every thing is so that does not diminish the capital."

LORD CRAIG.—"It is literally a dividend of profits, and the widow or liferentrix has right to it."

1st December 1801.

LORD PRESIDENT CAMPBELL said,—"If the fact be as stated in p. 12 and 13 of the petition, the liferentrix seems entitled to the whole extraordinary dividend in question, as made up entirely of profits *accruing in her own lifetime.* The answers made to this on the other side are not satisfactory. If a moderate sum is left to answer bankruptcies, or other such contingencies, it may be doubted if the directors are entitled to withhold from a liferentrix one shilling of the yearly profits. Can they increase or diminish her liferent at pleasure? When her husband died, she might have insisted that an inventory or state should be made of her husband's whole fortune, of whatever kind then belonging to him, and to have obtained a decree of declarator, finding that the whole annual produce thereafter accruing upon it, belonged to her during her life. If the directors of the bank were entitled to retain any part of these profits for the purpose of a guarantee, or for any purpose, they retained it for her and not for the fiar; and if, in place of retaining, they chose to pay it up, whether as an ordinary or an extraordinary dividend, it would only belong to her; for they had no right to convert interest or profit into capital, to her prejudice. Neither have they any title or interest to determine matters between fiar and liferenter. Indeed, it may be doubted whether the directors of both banks are not exceeding their powers, in laying such immense sums of undivided profits, far beyond what is necessary to answer contingencies.

" my 144 shares of the capital stock of the Bank of Scot-
" land, with the whole dividends OF profits therefrom aris-
" ing," burdened " with the liferent right of Mrs. Margaret
" Rollo *alias* Houstoun," his wife. Under this destination, the appellants admit that she is entitled to the ordinary dividends that may periodically be paid upon these shares: but neither from the *words* of the will, nor from any thing that can be gathered of the testator's intention, can she claim, or be entitled to any bonus or extraordinary dividend, being in its nature totally distinct from the stated half yearly dividends which constitute her liferent. From the face of the deed, the intention is clear to convey no more. He gives to the trustees (the appellants) the whole " *dividends* " OF profit on his bank stock," burdened with the life estate to the respondent, of the dividends when due, or become due thereon. Thus, then, the half yearly or ordinary dividends are given to the respondent in liferent, and these are all that she can claim. While to the trustees the dividends of profits are given, meaning thereby the accumulated profits out of which the bonus now in question was paid; and this, upon the obvious principle, that an extraordinary bonus is itself a part of a separate capital of extra profits or savings, made by the directors, set apart to answer any extraordinary loss or contingency, so as to prevent the necessity of encroaching upon the chartered capital. This additional capital of itself yielding an annual profit; and the respondent is entitled to the liferent of it, but no more.

Pleaded for the Respondent.—By the trust-deed in question, it clearly appears that all the dividends on 144 shares of bank-stock, of whatever description whatsoever, are conveyed to the respondent—the capital of these alone being reserved for those appointed to take the beneficial interest.

They cannot, without an act of Parliament, add to their capital; and the constitution of the banking seems to give no authority for withholding the due share of profits belonging to any individual without his own consent. The very question which occurs here, shows how improper it is to do it, for, according to the argument maintained by the trustees, they might starve her, by dividing nothing at all, or by merely dividing a trifle. There is nothing inextricable in it, for the question is, whether the £91,000 of clear profits is thus to be divided?"

LORD HERMAND.—" I am for altering.'

LORD MEADOWBANK.—" I am for altering. It is just an additional dividend, not an accretion to capital."

1803.

IRVING, &c. *v.* HOUSTOUN.

The deceased's intention in this respect is every where manifest. He directs the whole 144 shares to be transferred, immediately after his death, in her name in liferent, with power to uplift and receive all the dividends falling due thereon; and the trustees are to have no power therewith until after her death. Had the trustees, therefore, acted as they ought to have done, paid off the arrears of calls due to the bank, she would have received payment of this extraordinary dividend as a matter of course. By the trust-deed, the trustees were not entitled to receive any part of the dividends. Their participation therein, as trustees, was only to commence after her death; and therefore it was difficult to see on what ground they could claim these in the face of the express terms of the deed. He uses the term dividends of profits. This term included both ordinary and extraordinary dividends. The truster knew well the practice in his bank, of accumulating a part of the profits as a reserve fund. During his experience, he knew well that these were distributed under the name of extraordinary dividends. As the extraordinary dividend in question arose from profits, and became due after the existence of the respondent's right, and while the trustees were expressly prohibited from interfering with the profits of the bank shares, she was entitled to decree for the amount. In point of fact, and in the nature of the thing, there is no difference between an ordinary and extraordinary dividend. Both arise from the same source, both being profits of stock; and, as liferenter, she is entitled to the whole profits of that stock, without distinction.

After hearing counsel,

17th December 1802.

THE LORD CHANCELLOR (ELDON) said:—

"MY LORDS,

"This is a case of very great importance, whether it be considered in reference to its own circumstances, or is to be decided solely on its general principles. I have not yet perceived any ground on which to distinguish this from the cases on a similar subject which have been decided in this country.

Brander *v.* Brander. Vesey, junr's. Reports, vol. iv., p. 800.

"In a case which, in 1799, came before Lord Rosslyn, then Lord Chancellor, the question was considered, Whether an extraordinary dividend, or bonus as it is termed, made by the Bank of England, should go to the tenant for life, or the person in remainder. And, under all circumstances, it was decreed, that it should go to the latter, as being to be considered a part of the testator's capital, acquired by

the testator himself. In the case now before your Lordships, it appears that a considerable part of the money in dispute was gained by the bank before the death of the testator.

" In the case of Brander before alluded to, though the arguments and authorities there put do not seem to have much analogy with the question, yet it is considered as a case of great authority; because the Lord Chancellor says, that he had often considered the question, and the result of his opinion was, that the *bonus* belonged to the person in remainder. It does not, however, depend upon this case alone; but it has been taken as a rule of conduct ever since in very numerous instances. I have made many orders of a similar import in the Court of Chancery, proceeding upon this as an established rule.

" It is impossible not to consider what has been thus done as of great weight. These orders, so made, might have been reviewed in every instance; and thus the original case might have been again discussed and reviewed by the Lord Chancellor in the due course of being brought before your Lordships by appeal. But as nothing of the kind has been done, this shows the concurrent opinion of the bar and of the public, that *that* case was rightly decided.

" But still that case does not preclude your Lordships from entering into a consideration of the principle of those cases, if it appear in the present case, coming as it does by appeal from the Courts in Scotland, that such principle has not been recognized by the law of Scotland. The ground of the decision in the present case does not distinctly appear, and the parties are not agreed in their admissions at the bar upon this point. If it proceeded upon the general principle, your Lordships have now imposed upon you a duty that cannot be fulfilled without great consideration, namely, to pronounce which of the two learned Courts has decided the question aright?

" But if the Court below decided this case on any special circumstances, much more if they expressed a concurrence with the doctrine laid down in the case of Brander *v.* Brander, your deliberation as to the judgment proper to be pronounced in this case would be much facilitated. This would reduce the question merely to an interpretation of Mr. Houstoun's will; as, if the Court had said, in a case when a testator gives an estate for life in his property to A., and the remainder in fee to B., then we should agree with the case of Brander *v.* Brander, but we have given this *bonus* to the tenant for life, upon the special bequests of the will.

" Any of your Lordships, looking at the questions which have been made upon this subject, and the nature of the bonus, might infuse or insert into your will, what would not only authorise, but require the Courts of law to say, that the tenant for life should have it. Then, in such a case, the question would be, whether or not the will included the extraordinary dividend or bonus, and these parties

1803.

IRVING, &c. *v.* HOUSTOUN.

must undoubtedly make out that it was given to them by the specialities of the will.

"If the matter now before you depended solely on a construction of the will, I should say that the decision need not be delayed to a later day than Monday next. But as the sentiments of the Court below are unknown upon the point of law, I think it is proper that we should learn whether the case was decided upon general principles, or on the specialities of the case.

"It would certainly strengthen the decision in the case of Brander, if the Court of Session coincided with it. But if they dissented from it, your Lordships must decide between them.

"If the information wanted can be given us before the Christmas recess, I shall be glad that the case be decided before the House rises. In hopes that this information may be obtained, I move that the farther consideration of this case be put off till Thursday next."

Ordered accordingly.

On 27th July 1803, *case resumed.*

THE LORD CHANCELLOR (ELDON) said:—

"My Lords,

"This case is of considerable importance to the public. It arises out of the following circumstances:

"On the 28th June 1794, Alexander Houstoun executed a trust-disposition of all his property to certain gentlemen, being the appellants in this cause. This deed contains a clause, on which the present question rests, in these words:—'And most particularly as to 'my personal estate, I hereby assign, dispone, convey and make over 'to my trustees above mentioned, all and whole my 144 shares of 'the capital stock of the Bank of Scotland,' &c. (Here his Lordship read that part of the deed which is contained in the first and second pages of the appellant's case).

"The appellants, in their printed cases, and in the argument at the bar, laid some stress on this, that Mr. Houstoun conveyed to his trustees his 144 shares of stock, with the whole 'dividends of profit therefrom arising, and that Mrs. Houstoun was 'to receive and 'uplift the dividends when due, or becoming due, thereon.' From this difference of expression, it was argued that Mr. Houstoun meant to give his wife no more than the ordinary and accustomed dividends on his stock, whereas the trustees were to receive every thing that the bank might pay thereon. The respondent, however, in her appeal case, has printed a clause from the deed, which shows that it will not bear the inference put upon it by the appellants. Mr. Houstoun, after constituting his trustees assignees to his heritable subjects, adds, 'and in and to the dividends of profits arising 'from my shares in the Bank of Scotland that may fall due and be 'payable after the decease of the longest liver of him and his said

'spouse.' Here he uses the same words as to Mrs. Houstoun's liferent, which the appellants stated as inferring the conveyance of a larger estate and interest to the trustees. The case therefore comes to be purely that of a tenant for life, and of those interested in remainder in the stock in question; and the point for our decision is, which of these parties should be entitled to an extraordinary dividend, declared by the Bank of Scotland, which is known in both countries by the name of a *bonus*.

"In consequence of an addition to the stock of the Bank of Scotland, Mr. Houstoun, recently before his death, had subscribed for a certain number of the shares of that stock; and at his death a considerable part of the subscriptions, which had been payable by instalments, was unpaid. The trustees might have sold some of his stock vested in the 3 per cent. consols, to have paid the future instalments as they fell due, but the price of that stock being low, the instalments were allowed to run in arrear, for which interest was paid to the bank. This was done with Mrs. Houstoun's concurrence, and, in its operation, it was prejudicial neither to the liferentrix nor the fiar.

"In 1799, the Bank of Scotland declared a bonus or extraordinary dividend in the following words. (Here his Lordship read the same.) The bank detained this bonus to answer the instalments not then paid up of the stock which had been subscribed for; but the question remains the same, between the present parties, as if the calls or instalments had been regularly paid up when they became due.

"Mrs. Houstoun then brought her action against the appellants. (Here his Lordship read from the printed cases, the conclusions of her summons, and the appellants' defences.) The Court, by its first interlocutor (23d June 1801,) 'Sustained the defences, to the ex-'tent of such part of the extraordinary dividend in question, as may 'have arisen from the undivided profits of the stock, during Mr. 'Houstoun's life.' The principle here was, that an account was to be taken of the extraordinary profits which had arisen before Mr. Houstoun's death, and of those which had arisen afterwards, and that the result of the two accounts would form a rule for settling this question.

"Both parties reclaimed against this judgment, and it was afterwards altered by the Court, who found the liferentrix entitled to the extraordinary dividend. The decree was suspended, but the bill being refused, the whole matter was brought here by appeal. Dec. 1, 1801.

"Here I may take leave to mention, that a similar question had occurred in this country in the Court of Chancery, before a noble and learned Lord, now present, Brander *v.* Brander, in 1799, and I can see no reason why there should be a difference in the decisions of the two countries in regard to bank stock. Lord Rosslyn.

"In that case, the noble and learned person stated that he 'had

1803.

IRVING, &c. *v.* HOUSTOUN.

'often considered the question, and it seemed to him, in all the dif-
'ferent ways he could turn it, that there was no way to be taken
'but to consider it as an accretion to the capital, and the tenants for
'life would have the benefit of the dividend.' This was a most equitable decision. A similar decision had also been made by Lord Alvanley when sitting in a Court of equity. These have been followed in all cases where bonuses have been divided in the Court of Chancery among factors and wards, the number of which cases is very great indeed; in all these, such bonuses have been held an accretion to the capital.

"These cases, particularly that of Brander, was pressed on the Court of Session as authority upon this point. I think the Court did not act upon it as such, for this reason, because they only saw it as stated in the printed report, and they entertained doubts if the bonuses had not, in that case, been declared in the testator's life-time. If it had been so declared, there could not have been a shadow of doubt upon the question.

"I have provided myself with the original papers in that case of Brander, the facts in which were, that the will was made in 1785—the testator died in 1787—the bonus was declared in 1797—and the decree was pronounced in 1798. (Here his Lordship read extracts from these original papers).

"The question for the determination of your Lordships, therefore, is, Whether you will *affirm* the judgment in the present appeal, and thereby reverse all that has been done in this country, or reverse that judgment, and thereby confirm these decisions? I have the less uneasiness in stating my opinion, that it will be proper to reverse this decree, as I think the Court of Session would have decided otherwise, if they had known the true state of the case in Brander *v.* Brander. The noble and learned Lord who pronounced that decision, and Lord Alvanley, both concur in the same opinion.

"It is impossible to deny that great difficulties attend this matter; the proper question is, on which side the fewest difficulties lie? And, added to this, in a case of *res non integra*, I think your Lordships would scarcely reverse the very numerous decisions pronounced in this country, except upon strong grounds.

"The Bank of England, to which the Bank of Scotland is similar in this respect, has a capital limited by Parliament to a certain amount. This limitation, if strictly adhered to, would have this inconvenience attached to it, that circumstances (of which we have seen recently a very strong instance) might occur, to oblige them to reduce their ordinary dividends. Therefore it is, that these companies have what is termed their floating capital, which they lay out in the purchase of exchequer and navy bills, in discounts, and in every species of property that can be turned into cash at pleasure. Every person who buys bank stock is aware of this; and if he gives the life interest of his estate to any one, it can scarcely be his mean-

Alluding to Mr. Astlett's fraud on the Bank.

ing that the liferenter should run away with a bonus that may have been accumulating on the floating capital for half a century.

" In point of principle, the first interlocutor in this case seems better founded than their ultimate decision. On what ground of equity can it be contended, that the liferenter shall have any part of Mr. Houstoun's capital accumulated during his life? If £500 had been accumulated at Mr. Houstoun's death, another £500 at the period of declaring the extraordinary dividend, and a *bonus* of £500 then given, it would be very difficult to say, that such bonus should not be applied to the sum first due.

" But a question of this sort cannot be considered in this narrow manner; what might be decided in the case of an ordinary succession in Scotland, in regard to cut wood, or of underwood cut in one, out of a good many years, will not apply here. Were you to take an account of the profits on the floating capital of the bank in this case, it would lead into a discussion of that matter from the beginning, and with all the other proprietors of stock. It is not a question of what Mrs. Houstoun would be entitled to alone, but of what other persons, who having been so dealt with in similar circumstances, were entitled to. It is well known that the bank lays out part of its floating capital in building and various other improvements, which so far diminish its floating capital. If the tenant for life were vested with the profits on this floating capital, his interest in such buildings would pass to his representatives in this country, who, at the distance of 150 years, might call upon the bank for a recompense. The oldest tenant for life would have had a right to be first satisfied.

" It will be seen that these would have led to inconveniences which would have been intolerable. Therefore it was that the bonus was given to the person interested in the capital. Though I am aware that there is a difficulty in the principle of the English decisions, it is impossible not to say, that the decisions in both countries ought to be the same. I therefore think your Lordships will do right in reversing the present interlocutor."

EARL OF ROSSLYN.—(He spoke in so low a tone of voice that it was only at intervals that he was heard).

" I entirely agree with the sentiments which have been delivered by the Lord Chancellor. When I first came to consider the case of Brander *v.* Brander, I thought it would be necessary to learn what part of the *bonus* had accumulated before the testator's death, and what part since that period, to do justice between the claimants. The bank were very much alarmed when I hinted any intention of this kind. Upon considering this matter maturely in all its consequences, the judgment was pronounced in that case, holding the *bonus* to be an accretion to the capital."

1803.

ANDERSON
v.
CADELLS.

It was ordered and adjudged that the interlocutors complained of in the said appeal be reversed; and find that the extraordinary dividend or *bonus* given by the Bank of Scotland to the proprietors of the stock of the late Alexander Houstoun, deceased, ought not to be considered as belonging to Mrs. Houstoun, as the liferenter of the stock of the Bank of Scotland, belonging to the said late Alexander Houstoun, but that the same ought to be considered as belonging to all the persons interested in the said stock of the said late Alexander Houstoun; and that Mrs. Houstoun is therefore entitled only to the interest thereof for her life: And it is further ordered that the said cause be remitted back to the Court of Session in Scotland to proceed accordingly.

For Appellants, *Wm. Alexander, J. Abercromby.*
For Respondent, *Wm. Adam, Samuel Romilly.*

JOHN ANDERSON of Windygoull, Esq., *Appellant;*
Messrs. WILLIAM and JOHN CADELL, Merchants in Cockenzie, - - } *Respondents.*

House of Lords, 27th July 1803.

PRESCRIPTION—PROPERTY—COAL — NOVODAMUS — SIGNATURE.—This was a competition for the property of the coal, which had been disjoined from the property of the land by the superior selling the land under reservation of the coal; the superiority, with this reserved right of coal, reverted to the crown, by the forfeiture of the superior in 1715. The vassal, in 1716, obtained then a charter from the crown, under the Clan Act, in the novodamus of which, but not in the dispositive clause, the coal was mentioned. This, it was alleged, was a fraudulent interpolation. Three years thereafter, the York Buildings Company purchased the forfeited estates from the Government Commissioners, and obtained a charter, expressly conveying the coal of these lands; and, in 1779, the respondents purchased their right at a judicial sale, the decree conveying to them expressly the coal. The former (vassal) had a charter earlier in date, expressly mentioning the coal, upon which the long prescription had run, but there was no possession. The latter (purchasers) had also charter, expressly conveying the coal. fortified by prescriptive possession and working of the coal. Held the latter to have right to the coal.

This was an action of declarator brought at the instance