sent of the said heritors and the presbytery, may from time to time, or at any time, think fit; (2) To fix and determine, by order or interlocutor, the minimum rate or rates of feu-duty at which the said portion of the glebe may be feued; (3) To approve by interlocutor of the form or forms of feu-charter to be lodged in process by the petitioner, as the same may be altered or adjusted under your Lordships' authority, as the form or forms to be made use of from time to time as such feus respectively shall be granted; (4) To authorize the petitioner and his successors in office, with the consent of the heritors and the presbytery, to grant the said feus in the form or forms so approved of from time to time as he and they shall think proper, subject to any conditions or stipulations which your Lordships may deem proper; and (5) To decern the amount of the costs, charges, and expenses incurred by the petitioner in the present application and incidental thereto, and of making and constructing streets, roads, passages, sewers, and drains, in or through the said portion of the glebe, as the same shall be ascertained in the course of the present petition, a permanent burden upon the said glebe, all in terms of the before-recited Act; or to do further or otherwise in the premises as to your Lordships shall seem just."

Along with the petition was lodged a draft form of feu-disposition.

The Lord Ordinary (BARCAPLE) remitted to Mr Charles Macgibbon, builder, to inquire into the facts stated in the petition, and to report his opinion thereon, and as to the minimum rate at which, if the petition was granted, the glebe should be feued or leased for building, and as to any conditions or restrictions subject to which the prayer of the petition should be granted.

Mr Macgibbon reported.

The Lord Ordinary thereupon reported the case to the Teind Court.

The Court—this being the first petition under the Glebe Act 1866—remitted to Mr J. G. Murray, W.S., to examine the proceedings, with the proposed feu-charter, and to frame such a form of feu-charter or feu-contract as, in his opinion, would be most suitable and convenient to this and similar cases.

Mr Murray reported, with a form of feu-charter, in terms of this remit.

The petition was again moved in before the Court, and the following interlocutor was pronounced:—"Having resumed consideration of the petition, with the report of the Lord Ordinary and also the report of Mr T. G. Murray, W.S., Approve of the form of feu-charter, as now amended and finally adjusted, No. of process now authenticated as relative hereto, and appoint it to be the form of feu-charter to be used from time to time *mutatis mutandis* in feuing the portion of the glebe of Kirkcaldy after-mentioned; prohibit the clerk from lending the same, but authorize him to give to all parties interested certified copies thereof. Authorize and empower the petitioner and his successors in office, ministers of the said parish, subject to the provisions of the Glebe Land (Scotland) Act 1866, to dispone that portion of the said glebe described in the petition as the large glebe of Kirkcaldy, or any part or parts thereof, in feu for the highest feu-duty or feu-duties that can be obtained for the same, not being less than the rate of £20 per acre, and that in such portions and at such times as he and they may find expedient, to be holden by the disponees and feuars thereof of and under the minister of the parish for the time allenarly as lawful superior; and *quoad ultra* supersede in the meantime further consideration of the petition: Allow an account of the expenses incurred by the petitioner to be lodged, and remit the same to the auditor to tax and to report."

The LORD PRESIDENT intimated the opinion of the Court to be, that the petition should remain in Court, to be moved in from time to time as might be necessary, and that it would not be necessary in future in such petitions to set out at length all the clauses of the Act, but that a general reference would be sufficient.

Counsel for Petitioner—A. Gibson.
Agent—G. F. Scott, S.S.C.

COURT OF SESSION.

Wednesday, July 10.

FIRST DIVISION.

CAMPBELL, PETITIONER.

Tutor-nominate—Authority to Borrow Money—20 & 21 *Vict.*, *c.* 56, § 4. Petition by tutor-nominate for authority to borrow money on security of pupil's estates held properly presented in the Inner House.

This was a petition at the instance of Colin Campbell, tutor-nominate to Robert Dixon of Levengrove, Dumbartonshire, for authority to borrow money on the security of the pupil's heritable estate, to enable him to discharge certain debts due by the estate of the pupil's father, the late Robert Dixon.

FRASER, for the petitioner, raised the point whether such a petition ought to be presented in the Inner House or before the Lord Ordinary. He cited 20 and 21 Vict., c. 56, § 4, and the following authorities:—*Morison*, 20th Feb. 1857, 19 D. 493; *Morison*, 19th July 1861, 23 D., 1373; *Kyle*, 10th June 1862, 24 D., 1083; *Young*, 25th Feb. 1864, 2 Macph., 695; *Stewart* v. *Chalmers*, 14th June 1864, 2 Macph., 1216; *Brown's Tutors*, 16th July 1867; *ante*, p 184.

LORD PRESIDENT—It seems to me that this clause of the Act of Parliament has been construed with great attention to this general principle or rule, that all applications to what is properly the *nobile officium* of the Court, fall naturally to be presented to the Inner House. And certainly the attention the Court have paid to that general rule has very much limited the general words at the beginning of the clause; and the reason for that limitation is sound. As to the present petition, that is clearly an application to the *nobile officium* of the Court in the highest sense of the term. There is no more delicate exercise of the equitable jurisdiction of the Court than in granting powers to tutors-nominate. I have no doubt that this is rightly presented in the Inner House.

The other Judges concurred, LORD DEAS observing that the other construction suggested would lead to this, that the whole *nobile officium* of the Court would be committed to the Lord Ordinary. The Court had before them a number of these petitions by tutors-nominate for special powers; they had held that they were all competent, and that the Court must bestow the greatest attention on the case before they would exercise their *nobile officium*.

On the motion of the petitioner, the Court remitted to the Lord Ordinary to inquire and report.

Agent for Petitioner—John Ross, S.S.C.

Wednesday, July 17.

GUILD *v.* GIBB.

Process—Advocation—Failure to Print and Box. Advocator having failed to obtemper Lord Ordinary's interlocutor appointing him to print and box, the respondent printed the Lord Ordinary's interlocutor and the note of advocation, and enrolled in the single bills. Case sent to summar roll. Thereafter, in respect of no appearance by advocator, advocation dismissed.

This was an advocation from the Sheriff-Court of Dundee. The note of advocation was lodged with the Clerk of Court on 2d April 1867. The Lord Ordinary, on 18th June 1867, pronounced this interlocutor:—"Allows parties to lodge additional pleas in law in eight days each, and on the same being done, on the motion of the advocator, reports this advocation to the Lords of the First Division, in terms of the statute; apoints him to print the record, proof, and any other papers which may be deemed necessary; and to box the same to the Court, and grants warrant to enrol in the Inner House rolls in common form."

The advocator lodged no additional pleas. He did not print and box. The respondent then, following the procedure in the case of *Dow and Mandatory* v. *Jamieson*, 18th June 1867 (*ante*, pp. 107, 173), printed the Lord Ordinary's interlocutor of 18th June, and the note of advocation. The case appeared in the single bills.

BERRY, for the respondent, moved the Court to close the record and send the case to the summar roll, with the view of having it disposed of.

THOMS, for the advocator, contended that the motion was incompetent. He cited *Millar v. Logan*, 20 D., 522, and maintained that no additional pleas having been lodged by the parties, the report to the Inner House fell, and the case was still before the Lord Ordinary. The report was conditional, and did not take effect until additional pleas were lodged. He contended that the case of *Dow* v. *Jamieson* was not an authority in point, the interlocutor in that case not being in the same terms as here.

LORD PRESIDENT—It certainly is very desirable to have some means of preventing an advocator from lying by as this advocator had been doing, and tiding over a session in this way, without taking a single step in his advocation, and I don't see any difficulty from the statute. The Lord Ordinary is directed, if a motion be made to that effect before him, to appoint the record and proof to be printed, and boxed to the Judges of the Inner House, and to report the cause to the Inner House; but it is not on that being done that he is to report, nor on anything being done, in so far as the statute is concerned. And, unless there is some difficulty in the form of the interlocutor here, we are in a position to send the case to the roll. At first sight there does seem some difficulty. The Lord Ordinary allowed parties to lodge additional pleas, in eight days each, and, on that being done, reports to the Inner House. Certainly, taking that literally, the report does not properly become a report until that is done. But looking to the fact that the thing is only allowed to be done, and may be done or not as the parties think fit, this is too strict a reading of the interlocutor. I think the Lord Ordinary intended to allow each party eight days to lodge additional pleas, and after that to report, whether they lodged additional pleas or not. And therefore such condition as there is prefixed to this interlocutor is sufficiently purified by the lapse of time allowed for lodging additional pleas, as well as by the actual lodging of additional pleas. And therefore this report is now an unconditional report, and the case falls under the principle of *Dow* v. *Jamieson*, which we decided a very short time ago. And therefore I think we ought to send this note of advocation to the roll; and in order to make the remedy practically available to the respondent, it is necessary to put it to the roll immediately; but we may give the advocator all the time we can, consistently with that, to put himself right by printing and boxing the papers. What I propose is, to put it to the roll for Saturday; and if the advocator has not by that time printed and boxed, we shall give judgment against him by default.

The other Judges concurred.

On the following Saturday accordingly the case was put out in the summar roll. The advocator did not appear. The Court, in respect of his non-appearance, dismissed the advocation, with expenses.

Agents for Advocator—Lindsay & Paterson, W.S.

Agents for Respondent—Murray, Beath, & Murray, W.S.

Thursday, July 18.

FIRST DIVISION.

NEWTON *v.* NEWTON.

Entail—Deed of Locality—Reduction—Deathbed—Reserved Power—Faculty—Terce—Bond of Provision. Circumstances in which a deed of locality and a bond of provision in favour of younger children, executed by an heir of entail, reduced on the head of deathbed.

Bond of Annuity—Entail—Reduction. Circumstances in which held that a bond of annuity executed by an heir of entail was struck at by the prohibition in the entail, and deed reduced.

The pursuer, W. D. O. Hay Newton, succeeded on the death of his father, on 19th November 1863, to the entailed estates of Newton. In the following year he raised three actions. The first of these actions was directed against his mother, and concluded for reduction, *ex capite lecti*, of a deed of locality executed in her favour by the deceased Mr Hay Newtown, on 31st October 1863.

The defender did not dispute that the deed in question had been executed by the late Mr Newton on deathbed, but she maintained these pleas:—(1) That the action was excluded by a bond of provision or annuity executed in her favour by the deceased Mr Newton, in terms of the Aberdeen Act, in 1860; (2) that bond was binding on the pursuer, and was valid and effectual, so far as regarded the lands therein described, and in so far as the deed of locality now sought to be reduced affected these lands, the pursuer's title to maintain the action was excluded; (3) the deed of locality had been executed in terms of reserved faculties in the deeds of entail, and was therefore effectual; (4) the plea of deathbed was excluded, in respect that the deed sought to be reduced was granted for onerous causes; and *separatim*, the defender was entitled to maintain the deed to the extent of her right of terce in the lands.