therein set forth. And what were founded upon as valuations in these cases, were merely decrees of approbation of these prior extrajudicial arrangements. For the reason already stated, I think that these proceedings ought not to be sustained, and that this special objection to each of these two decrees ought to receive effect.

Lord Deas—I have listended attentively to the opinion delivered by your Lordship in the chair, and I have followed the whole of it to my own satisfaction, with the single exception of a remark which your Lordship made upon the case of *Thomson* v. *The Officers of State*, and in consequence of not being sure that I quite apprehend what your Lordship said upon that case, I wish to explain that I do not hold that, in the general case, a valuation before the Sub-Commissioners would be good without calling a titular, and I do not think that that case of *Thomson*, when it is properly attended to, sanctions any such notion. I think I had occasion to allude to that matter in the late case of the *Deans of the Chapel Royal*, and I adhere to the view that I there stated in regard to it. With that single explanation, I adopt not merely the conclusions at which your Lordship has arrived, but the whole grounds upon which that conclusion is arrived at. I so entirely concur in all the observations which your Lordship has made that it would only be a waste of judicial time to endeavour to state my own views in different language from that in which they have been stated so clearly and so distinctly by your Lordship. And therefore, with the explanation I have made, I entirely concur in your Lordship's opinion.

Lord Ardmillan—If the question whether the valuations by the High Commission are liable to fatal objection in consequence of the minister not having been called as a party were now open, and if we were dealing with the case where the decree of valuation was pronounced on proof before the Commission, I should be disposed to think that many of the very important and instructive observations of Lord Curriehill in regard to cases where the minister was a stipendiary, and not titular, are entitled to great weight. But I agree with your Lordship in the chair that the question cannot now be considered as open to us in this Court. If there is a *series rerum judicatarum* on the point we must adhere to it. We cannot in this Court permit the result of research, however careful, and speculation, however ingenious, to re-open a point resting on clear, consistent, and continued authority; and I am, with your Lordship, of opinion that the authority upon the matter, both of decisions and of institutional writers, is in favour of this objection. Where the objection is taken to the valuation by Sub-Commissioners the authority is that it is not a good objection, and I think upon the obvious reason that the minister has the opportunity for afterwards appearing and enforcing his right, and correcting anything that may be wrong; and it appears to me that that is mainly urged as the reason in argument why the objection should be repelled in the case of the sub-valuation. In the case of the valuation in the High Court, it seems to me that the case is now past our dealing with as an open question, and the authority of Sir George Mackenzie, and Forbes, and of Erskine, I think, goes to support the same conclusion; and your Lordship's most interesting and careful analysis of the decision in the case of *Campbelton* quite satisfies me that that case of *Campbelton* was decided on the distinction between the two valuations—the valuation by a Sub-Commission, and the valuation by the High Court—and that had the law been as it is maintained to be by those who now resist this objection, that judgment would not have been pronounced in the manner and with the observations by which it was accompanied. I have only to add that I think, in this particular case, and with reference to all the cases now before us, the additional circumstance must be borne in mind that, with one exception, they are all of them cases where the judgment of the High Commission was not upon a proof, but was the mere ratification of the private consent of parties: and the consent of parties cannot bind those who were not consenting, and the ratification of the consent can bind nobody who was not bound by the consent. Therefore, in all cases where the High Commission does no more than ratify a consent, it cannot go beyond the measure of that consent. On these grounds I agree with your Lordship that the objection should be sustained in this action.

Lord President—Then we adhere to the Lord Ordinary's interlocutor.

Mr Asher—With expenses?

Lord President—With expenses.

Agents for Ministers—H. and A. Inglis, W.S.
Agents for Mr Forbes—Henry & Shiress, S.S.C.
Agent for Major Paton—W. Duthie, W.S.
Agents for Mr Skene—Auld & Chambers, W.S.
Agent for Mr Hay—James Webster, S.S.C.

Saturday, February 29.

WATT *v.* SMITH.

Title to sue—Property—Possession—Lease—Squatter—Reduction—Erection of building by tenant on ground beyond the limits of the subject let. Circumstances in which *held* that a party had no title to sue a reduction of certain decrees in the Court of Session and Sheriff-court, the effect of which had been to remove him from certain premises.

This was an action of reduction and declarator at the instance of James Watt, tanner, Aberdeen, against George Smith, wool merchant and skinner, there.

It appeared that the pursuer in 1862 took a seven years' lease of a house and piece of ground in Aberdeen, belonging to Robert Smith, and possessed the same until July 1864. He then, by agreement with the defender, who was by that time in right of the property, renounced his lease. He now alleged in this action that while in the occupation of these premises, he erected at his own expense, beyond the walls and boundaries of the subjects leased to him, and on the pathway of the public street, a small building of one storey in height, with entrance from the said pavement; that in the end of July 1864 the defender presented a petition to the Sheriff of Aberdeenshire, setting forth that this building was part of the subjects embraced in the pursuer's lease, and craving warrant of removal therefrom against the pursuer, and interdict against his taking away certain fixtures from the house, which process, interim interdict being first granted, was sisted by the Sheriff, until the question of heritable right should be determined. The pursuer farther alleged:—(Cond. 8) "On the 27th November 1866, the defender instituted in the Court of Session

an action of declarator and removing against the pursuer, in which the defender called the municipal authorities of Aberdeen for their interest, and in which he concluded that it ought and should be found and declared that his titles comprehended the foresaid small building, and that the pursuer should be decerned to remove from the same. Decree in absence was allowed to pass in the action on 8th January 1867, and the pursuer thereupon handed the key of the small building to the defender, who then took possession of the same." Thereafter the Sheriff-court process was again moved in, and on "the 5th June 1867, the Sheriff-substitute, having inspected the premises, declared the interim interdict perpetual; found that it was admitted that possession of the whole subjects in question had been ceded, and that at the date of presenting the petition the defender was entitled to decree of ejection, in terms of its prayer; and found the pursuer liable in expenses. This interlocutor the Sheriff, on 18th September 1867, adhered to, on appeal." The pursuer now sought reduction of the interlocutors and decrees in these processes, and declarator that the building in question was not the property of the defender, and that the pursuer was entitled to remove the same, or at least the woodwork, or was at least entitled to get payment from the defender of the value of the materials used in constructing the house.

The defender objected that the pursuer had no title to sue.

The Lord Ordinary (JERVISWOODE) sustained this objection, and assoilzied the defender from the reductive conclusions of the action.

The pursuer reclaimed.

MAIR for reclaimer.

CLARK and LAMOND, for respondent, were not called on.

LORD PRESIDENT—I have no doubt in this case, taking it on the pursuer's own statement. His statement is this, that when in possession of a property belonging to the defender, under a lease, dated in 1862, for seven years, he erected at his own expense, on ground beyond the ground let to him, and encroaching on the public street, an additional building. Then he renounced his lease by agreement on 12th July 1864, and he ceded possession of the rest of the property; but when asked to give up this additional building, he says, "No, it is not yours; and though I admit it is not mine, I insist that it is erected on the public street; and as it is not yours, you can't get it, and I am not to be put out." That is a quite untenable position to take up. The pursuer confessing himself to be absolutely without a shadow of title to heritable subjects, has no title to sue an action to reduce proceedings which have the effect of removing him from these premises; and just as little has he a title to open up a decree of declarator at the instance of the defender against the only parties who could set up an adverse title, because if he had appeared in these proceedings he could not have been heard to open his mouth in that process.

LORD CURRIEHILL—The position which the pursuer of this action takes, is, that he is a squatter. I so far go along with Mr Mair in thinking that a squatter might reasonably object to any one of the public coming to challenge him. But that is not the position of the pursuer, because there has been a judgment pronounced as between these parties to the effect that the pursuer has no title. That has been extracted, and has been carried into execution so far that the pursuer has relinquished the possession to the defender, who is now in possession. The pursuer now says (*reads article* 8) so that the defender not only has a decree of this Court assoilzing him from the claim made by the pursuer, but he is in possession with consent of the pursuer. The defender is now called on to produce the decree in his favour. A party is not bound to produce any right that belongs to him, or to enter into his grounds of possession at the call of any party who is without a title. As a defence against this action, I have no doubt that the defender is entitled to call on the pursuer to show his title to sue.

LORD DEAS—The pursuer derived all his right to the property under the lease mentioned in the pursuer's statement. He got a lease which comprehended this piece of ground, provided the landlord had power to give it. While possessing under that lease, he erected this building. That is all the title the pursuer ever had. He renounced the lease, and, of course, he renounced all he got under the lease. Besides, in the action of declarator brought by this defender against the pursuer and the magistrates, the magistrates have allowed decree to go out against them, the effect of which is to make him the owner of the ground as in a question with them. This is an action of reduction of a decree in absence, and in such an action, before the party can touch the decree, he must show that, if it is opened up, he will probably succeed in his action. If the pursuer had not shown that it was impossible for him to succeed on the merits he might have perhaps been allowed to say, "Satisfy the production in the first instance." But it is abundantly shown by the pursuer himself that he could not succeed in his action if he did go on. In these circumstances it is not necessary to satisfy the production. Whether the pursuer may have a claim for the expense of that erection, is not touched by this interlocutor, but undoubtedly he has no title to sue this action.

LORD ARDMILLAN—I never saw a more hopeless case than this. The pursuer seeks to reduce an interlocutor of the Sheriff on a possessory question without having any possession; and he seeks to reduce the decree of this Court without having any heritable right. In these circumstances he cannot possibly succeed. I don't think it necessary that he should have a good case on the merits, but he must have a title to sue. The defender says the building is on his property. The pursuer has no title except from the defender, and the Police Commissioners, the only other parties who are, the pursuer says, the true owners, don't say they are so, and allow a judgment to pass against them, constituting a right in the defender as against them.

Agent for Pursuer—William Officer, S.S.C.

Agents for Defender—M'Ewen & Carment, S.S.C.

Tuesday, March 3.

JURY TRIAL.

(Before Lord Ormidale.)

STEWART *v.* M'LAREN & CO.

Reparation—Death of Pursuer's Son. In an action of damages on account of the death of the pursuer's son, verdict for pursuer.

In this case Alexander Stewart, blacksmith at