reservation of the claim) did not exhaust the submission *repelled.*

In 1866 and 1867 the pursuers, clay merchants at Stourbridge, supplied the defender Borron, glass and bottle manufacturer in Glasgow, with clay for pots for manufacturing glass. Disputes arose as to the quality of the clay, whereupon the parties referred to Little "all claims, disputes, questions, and differences presently depending and subsisting between them." . . . . "Whatever the said arbiter shall determine in the premises, whether interim or final, to be pronounced by him within one month from the last date thereof." Little received claims, heard the parties, and then found that Perrens & Harrison claimed from Borron the sum of £126, 14s. 11d. for a quantity of clay supplied by the former to the latter on 2d and 4th April 1867, at the price of £116, 9s. 2d.; further, that Borron pleaded that he is not indebted in the said sum of £126, 14s. 11d., or any part thereof, in respect, (1) that the clay in question was of a very inferior quality, and not of the quality contracted for or required for his business, and it having been timeously objected to by him, he has suffered damage to an extent exceeding said sum; and (2) that, in any view, he is entitled to set off against said sum a claim of damages amounting to £683, 10s., which he pleads against the said Perrens & Harrison, in respect of the inferior quality of certain clays supplied by them to him between the months of May 1866 and April 1867; further found it proved that the clay, the price of which is so claimed for, and the clay in respect of which damages are claimed as above mentioned, was ordered and sold as of the best quality, and for the purpose of making pots in which to manufacture glass bottles; further, that the claimants, Perrens & Harrison, had failed to prove that the clay supplied to them on 2d and 4th April 1867 was of the best quality, but in respect Borron had used the whole of the said clay by making it into pots, a number of which have not yet been used, and in respect he had not offered to return the clay from which the unused pots were made, but has reserved all claim of damage competent to him in consequence of their alleged defectiveness through the bad quality of the clay, found Perrens & Harrison entitled to the price of the clay claimed by them, being £116, 9s. 2d., but reserved to Borron all claim of damages competent to him in respect of the unused portion of said pots Further, found it proved that the clay in respect of which the claim of £683, 10s. is made, was of bad quality, and not conform to order; and that Borron has suffered loss and damage thereby, for which the said Perrens & Harrison are responsible, and assessed the same at the sum of £450 sterling; further, found that Borron is entitled to set off this sum against the foresaid sum of £126, 14s. 11d., and that this sum being deducted from the said sum of £450, Perrens and Harrison are indebted to Borron in the sum of £323, 5s. 1d., and accordingly decerned and ordained Perrens & Harrison to make payment to Borron of the said sum of £323, 5s. 1d.

The pursuers were also found liable in expenses; and Borron's claim, in respect of the unused clay, was reserved.

The pursuers now sought reduction of the decree, on this ground among others—that it did not exhaust the reference. The Lord Ordinary (ORMIDALE) repelled the plea, on the ground that the submission expressly bore that the parties bound themselves to acquiesce in, implement, and fulfil whatever the articles should determine in the premises, in whole or in part, by decree or decrees arbitral, whether interim or final.

The pursuers reclaimed.

SCOTT for reclaimers.

WATSON for Borron.

GUTHRIE for Little.

The Court adhered, but holding that it was unnecessary to go on that clause of the deed. A general submission is limited by the claims of the parties. Borron's claim contained that reservation which the arbiter had given effect to, and no objection had been taken in the answer to that claim by the pursuers, who were thus barred from founding on the omission by the arbiter to dispose of a claim which had not been brought before him, and which might never arise. A submission could not be held unexhausted simply because a possible claim was not disposed of. The case was accordingly remitted to the Lord Ordinary for argument on the other grounds of reduction.

Agent for Pursuers—D. Curror, S.S.C.

Agents for Borron—Gibson-Craig, Dalziel, & Brodies, W.S.

Agent for Little—D. Macbrair, S.S.C.

Thursday, June 24.

SECOND DIVISION.

CAMERON *v.* LORD LOVAT.

Teinds—Valuation of Lands—Parish—Misdescription. Held that a misdescription of lands to the extent of being described in one parish, while they were really situated in another, could not support a plea of non-valuation, there being no question as to the identity of the lands, and the minister having been called in the process in which they were valued.

This was a declarator brought by the minister of Kilmorack to have it declared that certain lands in his parish are unvalued. The present question related to the lands of Ardnagrask, Tomich, and Barnyards, which were said to be situated in the parish of Kilmorack, and to have been valued by mistake as in the united parish of Urray and Gilchrist. The pursuer contended that, being valued in the wrong parish, the lands were unvalued; and the Lord Ordinary (BARCAPLE) sustained this contention, holding himself bound by an old decision referred to in the recent case of *Rescobie.*

The following is his Lordship's interlocutor:—

"The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process—Finds it is admitted by the defender that the lands of Easter Muilzie, Muilsie Riach, and Eilean Aigas are unvalued for teind: Finds that the only lands, or portions of lands of Ardnagrask, Tomich, and Barnyards contained in either of the decree of valuation founded upon by the defender, are there valued as lying within the united parishes of Urray and Gilchrist: Finds that, in so far as any portions of the said lands so valued as lying within the united parishes of Urray and Gilchrist may actually lie within the parish of Kilmorack, the same have not been effectually valued: Finds that the pursuer avers, and the defender denies, that portions of said last-mentioned lands are situated in the parish of Kilmorack: Allows to the pursuer a proof of his said averment, and to the defender a con-

junct probation; Finds that, except the lands before mentioned, none of the lands which are the subject of this action are valued in either of the said decrees of valuation under the names by which they are described in the summons, but that the defender avers that they were included in the decree of valuation of 3d February 1773 under other names, as specified in the list produced by him: Allows to the defender a proof of his averments thereanent contained in the fourth article of his statement of facts, and to the pursuer a conjunct probation: Appoints the cause to be put to the Motion Roll on the first sederunt day in May next, to fix the time and mode of taking such proof; and reserves the question of expenses.

"*Note.*—1. It being now admitted that the lands of Easter Muilzie, Mulzie Riach, and Eilean Aigas are unvalued, decree in terms of the conclusions of the summons will fall to be pronounced in regard to them.

"2. The only lands, or portions of lands, of Ardnagrask, Tomich, and Barnyards, mentioned in the decree of 1773, are there valued as in the united parishes of Urray and Gilchrist. The Lovat estate was then in the hands of the Commissioners of Forfeited Estates, and it appears from the proof that these lands were entered in their rental as being in the parish of Kilmorack. But the witnesses deponed that they believed them to lie in the united parishes of Urray and Gilchrist, as they paid stipend to the minister there. In the grand decerniture the whole lands contained in the decree are valued separately as lying in the several parishes there specified, and these particular lands as in Urray and Gilchrist. The effect of lands being valued as in a parish different from that in which they are locally situated was the subject of decision in the recent case of the minister of *Rescobie v. Carnegie*, decided 5th February 1869. In that case, though the lands were libelled in the summons of valuation as lying in particular parishes, the particular lands in question being misdescribed in that respect, the ultimate decree of valuation did not refer to the parishes. On that ground the present Lord Ordinary held the valuation to be effectual, and his judgment was adhered to by the Second Division. But the Lord Ordinary feels himself precluded from taking that view in the present case by the judgment of the Court in the unreported case of *Kilmalie* in 1826, referred to in the case of *Rescobie*. The objection seems to be entirely technical, as the ministers of all the parishes were called, though they did not appear, and there is no reason to suppose that the fairness of the valuation would be in any way affected by the error as to the parish in which the lands lay.

"The defender denies that any portion of these lands lie in Kilmorack. The pursuer must prove that they do so, in order to entitle him to decree of declarator in regard to them.

"3. The question as to the remaining lands is, whether they were valued by the decree of 1773 under names different from those which they now bear, and by which they are described in the conclusions of the present action. It lies upon the defender to prove that they were so, and he has been allowed a proof, in which he must take the lead."

Lord Lovat reclaimed.

GIFFORD and RUTHERFURD for him.

CLARK and WATSON in answer.

The Court recalled the Lord Ordinary's interlocutor, so far as relating to the lands in question, and held the said lands to have been effectually valued, notwithstanding the mistake as to the parish. The ground of judgment was that there was no question as to the identity of the lands, and that a mere misdescription of their locality was of no importance, more especially as the minister of Kilmorack was called in the valuation along with the ministers of the adjoining parishes, and had thereby been duly certiorated. It was also important that the process in which the minister was called was a valuation of teinds and not one to fix boundaries merely.

Agents for the Pursuer—M'Ewen & Carment, W.S.

Agents for the Defender—Gibson-Craig, Dalziel & Brodies, W.S.

Friday, June 25.

FIRST DIVISION.

M'DOUALL *v.* CAIRD.

Landlord and Tenant—Game—Rabbits—Action of Declarator—Subjects embraced in lease—Regulations. Held, on construction of missives of lease and possession, that a tenant of a country house and grounds, including some fields let for agricultural purposes, had a right to kill rabbits over the estate generally by shooting or by such other means as might be necessary for keeping them down, and not merely on the agricultural subjects.

Circumstances in which the Court held it to be inexpedient to pronounce judgment in certain declaratory conclusions, on the ground that they were more fitly dealt with in an Inferior Court, if the rights sought to be declared were infringed.

From 1854 to 1856 the defender, Alexander M'Neel Caird, occupied the house and grounds of Genoch, belonging to Colonel M'Douall, of Logan, whose law-agent the defender has been for many years. In 1856 the defender obtained a lease of the premises "for five years from Whitsunday 1856, at the yearly rent of £40 sterling, viz., Genoch House, grounds, and offices, game, fishings, and pertinents as heretofore possessed by the said Alexander M'Neel Caird, with the addition of the garden, orchard, and the premises and pertinents occupied by the gardener and under-gardener, the lodge, and grounds behind it, and ground between sheep park and public road, with the rabbits in these grounds (which have not been in use to be let with the grass lands). The landlord to keep the buildings externally in repair, and replace any inner wood-work that from decay may be or become unsafe or untenantable. . . . Liberty is reserved for Colonel M'Douall or any member of his family, or any friend in company with him or them, or any friend staying at Logan House and having Colonel M'Douall's permission, to hunt, shoot, and fish in or upon the lands hereby set. Mr Caird to have possession of the Dovecot Park during the currency of this lease, on condition of his expending, during currency of said lease, twenty-five pounds sterling in top dressing said park with bone-dust," &c., &c. Certain other stipulations were contained in the lease, which was continued for five years by agreement dated 25th April 1860. On 14th January 1865 a memorandum of renewal was executed, which bore *inter alia* that "Mr Caird takes, and Colonel M'Douall lets to him, (1) the Blackground and Nine Acres, at £2 sterling per