

Tuesday, May 17.

FIRST DIVISION.

THE FERGUSON BEQUEST FUND TRUSTEES
v. THE EDUCATIONAL ENDOWMENT
COMMISSIONERS.

(*Ante*, p. 441.)

Process—Interlocutor—Correction.

In a Special Case under the Educational Endowments (Scotland) Act 1882, the Court pronounced an interlocutor answering the question of law as originally stated in the case. An alteration, however, was made in the question, it being matter of doubt whether this alteration was formally placed on the record before or after the said interlocutor was pronounced. The effect was that the interlocutor was at variance with the opinions of the Court.

A note was then presented to the Court by the Educational Endowment Commissioners to have the interlocutor corrected. Authorities—*Cuthill v. Burns*, March 20, 1862, 24 D. 849; *Harvey v. Lindsay*, July 20, 1875, 2 R. 980; *Forrest's Trustees*, March 18, 1884, 11 R. 719; *Moncrieff v. Police Commissioners of Perth*, June 4, 1886, 13 R. 927. There was no opposition. *Observed* that in the ordinary case the course adopted is either that the parties consent to the alteration, or that there is a formal appeal to the House of Lords in order to get the alteration made; but *held* that as under the terms of the said statute an appeal to the House of Lords was incompetent, and as there was no question as to what the decision in the case was, the Court should make the correction. Interlocutor corrected accordingly.

The interlocutor as corrected was as follows:—"Find and declare that the scheme complained of is not, in respect of any of the objections maintained by the first and second parties in the particulars mentioned in the case, beyond the scope of or disconform to the provisions of the Educational Endowments (Scotland) Act 1882, and is not contrary to law."

Counsel for Petitioners—Gillespie. Agent—Donald Beith, W.S.

Wednesday, May 18.

SECOND DIVISION.

[Lord Fraser, Ordinary.]

WATSON'S TRUSTEES v. GLASGOW FEUING
AND BUILDING COMPANY.

(*Ante*, p. 429.)

Expenses—Several Defenders—Common Defence—Liability.

In an action of reduction of a feu-contract, *quoad* certain obligations, raised by the trustees of the superior against a feuing company who had purchased from the original

feuar, two sub-feuars from the company appeared as defenders. With the action of reduction there was conjoined a petitory action, which had been previously raised by the company alone against the superior's trustees, for payment of a sum of money in respect of the superior's failure to implement the said obligations. Subsequently two other sub-feuars were sisted as defenders in the conjoined actions. The defenders were represented by the same counsel and agent, and stated a common defence. The trustees obtained decree in the action of reduction, and in the petitory action were assoiized. They were found entitled to expenses in each of the actions and in the conjoined actions. The sub-feuars maintained that decree for expenses should go out against the company only, as admittedly their appearance had caused no additional expense to the pursuers. *Held (diss. Lord Young)* that as the sub-feuars had appeared as defenders they were liable in expenses.

Arthur Watson and James Boyd, trustees of the deceased William Watson of Overlee, raised an action of reduction against the Glasgow Feuing and Building Company (Limited) for reduction of a feu-contract in so far as it imported certain obligations upon William Watson, as reported *ante*, p. 429. They called as defenders, besides the company, certain persons who had taken feus from it; two of these, Mr Barr Crawford and Mr James Follok, entered appearance as defenders. There was conjoined with the action of reduction a previous petitory action at the instance of the Feuing Company against Watson's trustees to recover the sum expended by them in consequence of Watson's failure to implement the obligation imposed upon him by the feu-contract. Two other feuars, Mr Hugh Herron and Mr David Bird, were sisted as defenders in the conjoined actions. All these feuars adopted the defences of the Feuing Company, and were represented by the same agent and counsel.

The Lord Ordinary pronounced interlocutors by which in the action of reduction his Lordship assoiized the defenders from the conclusions of the summons, and in the petitory action granted decree against Watson's trustees for a portion of the sum sued for, and found neither party entitled to expenses.

Watson's trustees reclaimed, and the Second Division pronounced this interlocutor:—"Having heard counsel for the parties on the reclaiming-note for Watson's trustees against Lord Fraser's interlocutors, . . . Recall the said interlocutors: In the action of reduction, reduce, decern, and declare in the terms of the conclusions of the libel; and in the petitory action assoiizie the defenders from the conclusions thereof: Find the said trustees entitled to expenses in each of the said actions and in the conjoined actions: Remit," &c.

On a motion by Watson's trustees for approval of the Auditor's report on the account of expenses incurred by them as defenders in the petitory action and pursuers in the action of reduction, the individual defenders, as apart from the Glasgow Feuing Company, argued—in the circumstances the company only ought