disponed, as we, with the said William Andrew, do hereby for ourselves, and acting in name and by authority as aforesaid, sell, alienate, and dispone from the said incorporation, from ourselves as individual members thereof, and from all that are or can anyways be concerned in the premises, or in the other property of the said incorporation, and from the successors in office of us the said present deacon and boxmaster, and from our heirs or other successors whomsoever, whether as official persons in the said incorporation, or as individuals, to and in favour of the said John Dawson."

Now, one thing is clear; there was a good contract of sale here, and I think there is no question made on that point; but the objection is that, the feudal title standing in the names of two functionaries, only one concurred in granting the disposition. Several other transfers took place, and at last the subjects were acquired by the petitioners. The beneficial right came to be transferred to the petitioners. The question is — Is there any good objection to the petitioners getting up the deposited price? The objection is that one-half *pro indiviso* is in the *haereditas jacens* of Johnston. Now, if that was the true legal position, the case would be brought very much to the position of one of the cases quoted to us. But it is said Johnston never had any right but as a trustee, and I think that is the true state of matters. I think there has been a confounding of two rights of a quite different character—that vested in a person for himself, and that vested in him as a trustee. I don't think Johnston's heir-at-law could have been served as his heir in these subjects, or that the right required to be taken out of his person in any such manner. There are two answers to the objection. The first is, that the trust was in two individuals, and that one of them concurred, the other being dead. It is said the fiduciary right accresced to the survivor, and I have an opinion on that subject which I am not going to express, for it is not necessary for the decision of this case. The next answer made to the objection is that there is here a valid title from the beneficiaries, and, if the railway company think it necessary, they may if they please take any steps they may think advisable to complete their own title. They have the same right to do so as the corporation in 1807, or its disponees in 1817, had. Even assuming the objection to be a valid one to the full extent stated, the law has provided the means whereby the company can complete its title. The law is quite clear that where subjects are vested in trustees, and they die without being divested of the feudal right, the beneficiaries may complete their title by a declaratory adjudication. There was once great difficulty as to this, but in the time of Lord Kames (1 Ross' Leading Cases, 320–328) a case occurred in 1756, and two years afterwards the case of Drummond *v.* M'Kenzie, and the rule was laid down that a beneficial right might be connected with the feudal title by declaratory adjudication. That rule has been followed ever since. The point occurred again in the case of Gordon's Trustees *v.* Harper (F.C. 4, Dec. 1821,) and in the case of Black *v.* Lorimer the principle was again acted on, and the summons in that case is the form for the purpose given in the Juridical Styles. The railway company may, therefore, make up their own title. It was said that in the case of Graham it was decided that a purchaser is not bound to make up the title of the seller. Certainly not; but the petitioners here are not asking the company to do so. In Graham's case it was indispensable to make up the seller's title, because the subjects were certainly in the *haereditas jacens* of another, and the seller only possessed on apparency. The principle on which I hold this objection to be groundless is, that the company are not here asked to make up the title of the sellers.

The LORD PRESIDENT and Lord ARDMILLAN concurred.

Lord DEAS declined, being a shareholder of the company.

The following interlocutor was pronounced :—

"*Edinburgh, 16th February*, 1867.—The Lords having considered the reclaiming note for the North British Railway Company, No. 35 of process, and heard counsel for the parties: Finds that, on the objection to the charter of resignation being obviated, the petitioner is not bound to establish any other title in his person, and that on the conveyance and titles offered by him being delivered to the respondents, he will be entitled to payment of the consigned money and interest thereof, and, subject to this finding, adhere to the Lord Ordinary's interlocutor, and remit the case to the Lord Ordinary: Find the reclaimers liable to the petitioners in the expenses of process since the date of the Lord Ordinary's interlocutor. Allow an account thereof to be given in, and remit to the auditor to tax the same, and to report to the Lord Ordinary and remit to his Lordship to decern for the taxed amount thereof.

"DUN. M'NEILL, *I.P.D.*"

Agents for Petitioners—White-Millar & Robson, S.S.C.

Agents for Railway Company—Dalmahoy & Cowan, W.S.

PETITION—THOMSON.

This was another application of the same kind as that in the preceding case. The North British Railway Company stated the same objection to the competency, which was disposed of in the same manner.

The objections stated to the title were—"1. That no prescriptive title had been produced to the respondents; 2. that the petitioner is not infeft; 3. that the word 'dispone' is awanting in the disposition in which the only warrant for infefting the petitioner is contained."

The Lord Ordinary (Mure) granted warrant to the petitioner to uplift the consigned fund upon her delivering to the respondents, along with a regular search of incumbrances, an assignation, or other deed of conveyance to the subjects in question, which will enable the respondents to complete their title under the charter of resignation, No. 9 of Process. His Lordship observed in his Note:—

"The objections to the title appear to the Lord Ordinary not well founded. For, although the property has been possessed upon a personal title for a series of years, it flows from a party who was duly infeft in 1806 on a feu-contract from the superior; and if the petitioner can show, which the Lord Ordinary thinks she is bound to do, by searches in common form, that there has been no preferable or competing right created in favour of any other party since the date of the disposition, No. 7 of process, the circumstance that the petitioner is herself not infeft, and that no infeftment was passed on the disposition No. 7 of process, is not, the Lord Ordinary conceives, a sufficient ground for the respondents rejecting the title, pro-

vided that the disposition is itself not open to objection.

"Now the only objection taken to this disposition is the omission after the words 'hereby sell, alienate,' of the word 'dispone' from the dispositive clause; and had this been a disposition without a procuratory of resignation, that omission might have given rise to a serious objection to the title; although the Lord Ordinary, having regard to the fact that the conveyance was plainly intended to operate as a *de presenti* one, and that the words 'make over,' which are substantially equivalent in meaning to the word 'dispone,' is inserted after 'hereby sell, alienate,' is not prepared to say that the omission of that word would necessarily be fatal to the deed. But the disposition contains a valid procuratory of resignation, which is truly a disposition in its nature, being a conveyance of the lands to the superior for new infeftment; and, as the lands in question have under the procuratory been resigned into the hands of the superior, who has accepted the resignation, and granted a charter to the petitioner as his vassal in the subjects in room of the granters of the procuratory, it appears to the Lord Ordinary that, if the petitioner produces proper searches up to the present date, she will be entitled to an order to uplift the money, upon her delivering a disposition or assignation to the respondents, such as will enable them to make up a title with the superior by means of the charter of resignation of 1861, No. 9 of process.

"D. M."

The railway company reclaimed.

SOLICITOR-GENERAL and THOMS, for the railway company, argued—1. No disposition is good which wants the word "dispone." The petitioner's title is therefore bad. 2. The Lord Ordinary has awarded expenses which he had no power to do. Great Northern Railway Co., 8th June 1848, 5 Rail. Cases, 269; Graham *v.* Caledonian Railway Co., 27th Jan. 1848, 10 D. 495.

CLARK and M'LAREN, for the petitioner, admitted the general rule contended for, but argued that as the defect could be obviated either under the procuratory of resignation or by adjudication in implement of the obligation to infeft, an assignation by which the company could obtain a good title was all that the petitioner was bound to give. Renton *v.* Anstruther, 14th Dec. 1843, 6 D. 238, and 16 S. 184.

At advising,

Lord CURRIEHILL—The objection here is that the dispositive clause of a disposition has not the word "dispone." The words are "sell, alienate, and make over." There is an obligation to infeft, a procuratory of resignation, a conveyance to writs, a precept of sasine, and absolute warrandice. There was therefore a good contract of sale, giving a right which has been transferred to the petitioner, who now offers to assign it to the company. The same principle which I stated in the case of Miles is applicable here. Assuming the objection to be valid, the company has nothing to do but lead an adjudication in implement and so complete its title at its own expense. The expenses connected with this application fall under the expenses which the company must pay under section 81.

The LORD PRESIDENT and Lord ARDMILLAN concurred.

Lord DEAS declined.

The following interlocutor was pronounced:—

"*Edinburgh, 16th February* 1867.—The Lords having considered the reclaiming note for the North British Railway Company, No. 26 of process, and heard counsel for the parties, they, subject to the explanation that the words "under the Charter of Resignation No. 9 of process" are deleted, adhere to the interlocutor of the Lord Ordinary reclaimed against, and refuse the desire of the reclaiming note: Find the respondents liable to the petitioner in additional expenses of process. Allow an account to be given in and remit to the auditor to tax the same and to report.

"DUN. M'NEILL, *I.P.D.*"

Agents for Petitioner—White-Millar & Robson, S.S.C.

Agents for Railway Company—Dalmahoy & Cowan, W.S.

Wednesday, Feb. 20.

SECOND DIVISION.

DEANS OF CHAPEL ROYAL *v.* JOHNSTONE AND OTHERS.

Teinds—Valuation—Reduction—Titular—Tacksman—Prescription—Homologation—Acquiescence. 1. Circumstances in which held that a decreet of valuation imported *ex facie* that the titular as well as the tacksman was a party thereto, and reasons of reduction maintained, on the ground that the titular was not called repelled. 2. Held that the action was excluded by the long negative prescription. Opinion by Lord Benholme that it was also excluded by the positive prescription. 3. Circumstances in which held that the action was excluded by homologation and acquiescence.

The defender Mr Johnstone is proprietor of a portion of the lands of Over and Nether Ballialies, in the parish of Kirkhope; and the other defenders, Mr Brown's trustees, are also proprietors of a portion of these lands and of the lands of Helmburne, in the same parish. The pursuers are the Deans of the Chapel Royal as donatories of the teinds and the Crown as titular.

The teinds of all these lands were valued by a decree of valuation of the High Court of Commission of Teinds, dated 28th July 1647, and the present action is brought to reduce that decree, and to have it declared that the pursuers are entitled to exact the teind at a fifth of the actual rental of the lands.

The Lord Ordinary (Barcaple) having assoilzied the defenders from the whole conclusions of the summons, the pursuers reclaimed, and, after a full argument at the bar, the Court ordered cases on the whole cause.

The parish of Kirkhope, in which the defenders' lands are situated, was, along with the parish of Yarrow and a portion of the parish of Ettrick, originally included in the ancient parish of St Marykirk of the Lowes, the teinds of which were, with various other endowments, annexed to the deanery of the Chapel Royal, originally founded and erected by James IV. in the year 1501, under the authority of a papal bull.

Shortly after the erection of the deanery, it was annexed to the bishopric of Galloway, but was, with its endowments, afterwards, by royal charter of mortification, dated in 1621, dissolved from the Crown and from the bishopric of Galloway, and erected into a separate benefice. By the same charter, Adam, bishop of Dunblane, received a life appointment to the deanery and its emoluments. This charter was ratified by Act of Parliament 1621, cap. 57. On the translation of this bishop