sion, "You must just go on, and do the best you can." No communication had ever taken place between Orr and Andrews, and it was not proved that May had communicated any of the letters written by Andrews to Orr, except one that the latter admitted having seen. He also admitted two conversations in the street on the subject. May died in 1866, and none of his business books have been recovered, but it was proved that he was on very intimate terms and almost in daily intercourse with Orr.

After a long correspondence, Andrews, without putting in defences to the action, joined with the defenders in a remit of the account to the Auditor, and consented that decree should pass against Orr for the sum taxed. Orr then brought a reduction of this remit and of the proceedings that followed thereon.

The Lord Ordinary (KINLOCH) reported the case to the Court on the pursuer's issue, expressing an opinion that the pursuer was entitled to an issue, on the ground that without authority an agent has no power by the law of Scotland to compromise an action. After some discussion, the issue was superseded, and the Court remitted to the Lord Ordinary to take proof of the parties' averments, under the Evidence Act. The case came before the Court on the reported proof.

GIFFORD and W. A. BROWN for pursuers.

CLARK and GEBBIE in answer.

The Court held (1) that Andrews rightly considered that he had authority from May to settle, and that May's letters were susceptible of that construction; and (2) that it must be assumed, from the intimate relation between the parties, that Orr knew what May was writing, and that Andrews' letters were communicated to him by May. LORD NEAVES took occasion expressly to compliment Mr Andrews for the desire to avoid litigation which he had manifested throughout the proceedings, and he hoped a similar spirit was not uncommon among the procurators in the Inferior Court.

Agent for Pursuer—A. Morison, S.S.C.

Agents for Defenders—Macgregor & Barclay, S.S.C.

Tuesday, July 9.

FIRST DIVISION.

PURVES *v.* BROCK.

Advocation—Competency—16 *and* 17 *Vict. c.* 80, § 22. A petitioner in a Sheriff-Court craved a warrant upon the respondent to deliver up to him a sheep which the petitioner alleged he had bought from a third party for £3, 5s., and which had been delivered to the respondent by mistake. Held that an advocation of the process was competent, and that the statement of the petitioner as to the price he had paid for the sheep was not conclusive as to the value of the cause.

James Purves, farmer, Lochend, presented a petition in the Sheriff-Court of Caithness against George Brock, farmer, West Greenland, stating that at a sale of farm stocking at the farm of Stainland, on 18th May 1865, he purchased a tup marked in a specified way, for £3, 5s.; that when he sent next day for the tup, the wrong tup was given him; that on finding this, and that the tup which he had bought was in the possession of the respondent, he sent for it to the respondent, but the respondent refused to give it up. He accordingly asked the Sheriff to ordain the respondent to deliver up the tup to him. It appeared that the respondent had purchased another tup at the price of £3, 3s. He got the petitioner's tup sent him by mistake. The Sheriff-Substitute held that the petitioner was entitled to vindicate his property in the way sought, and granted warrant against the respondent as craved. The Sheriff (on appeal) reversed, and dismissed the petition, holding that the petitioner never had any right of property in the tup, and that if there was any mistake in the matter, the action should have been laid against the seller and not against the respondent.

Purves advocated.

SOLICITOR-GENERAL (MILLAR), and M'LENNAN, for the respondent, took an objection to the competency of the advocation, on the ground that the value of the cause was under £25.

BLACK for advocator.

The Court unanimously repelled the objection.

LORD PRESIDENT—An objection was taken here to the competency of the advocation on the ground that the cause was not within the meaning of the Act 1853—that is to say, was not of the value of £25.

The petition in which the proceedings commenced prayed for a delivery of one tup which had been taken possession of by the respondent in the circumstances therein stated. The petitioner set forth the circumstances in which he acquired the tup—viz., by purchase at the sale of farm stock. Now, if nothing but that had been stated, it would plainly have been impossible for the Court to have ascertained the value of the cause, because the tup might have been of various values, for it is a matter of notoriety and everyday experience that while a tup may sell for the mere value of a fat sheep, others sell at the very highest prices; and therefore it is impossible to sustain the objection to the competency if the petition had been in that position. But then the petitioner, in stating the circumstances under which he acquired the tup, also mentions the price which he paid for it. He says he purchased it at the price of £3, 5s.; and that statement has produced the only difficulty, such as it is, which we have experienced. My opinion is, that that statement does not ascertain the value of the cause. The price that is paid for an article sought to be recovered cannot exclusively fix the value of it. It may be of much greater value. It may be of much greater value to the possessor, because its value to him may be enhanced by circumstances which do not affect others, and therefore the mention of the price paid for the tup does not prove that the cause is under the value of £25. It is incumbent on a party objecting that a cause is under that value, to prove that it is so, and that it is so from the pleadings themselves. I don't go the length of saying that the value of a cause is, under all circumstances, to be measured by the conclusions of the action, or the prayer of the petition, for I think it is to be gathered from the whole of the record as well. I cannot say that here the party stating the objection to the competency has discharged the *onus* of proving that the value of the cause is below £24.

The other judges concurred.

The case was then heard on the merits, when the Court unanimously recalled the judgment of the Sheriff, and reverted to that of the Sheriff-Substitute. The Lord President in giving judgment,

animadverted strongly on the delay which had taken place in the Inferior Court, the proof having been adjourned day after day for a period of three months, as if the case had been one of intricacy and importance.

Agent for Advocator - D. Forsyth, S.S.C.

Agents for Respondent—Morton, Whitehead, & Greig, W.S.

Wednesday, July 10.

MACKAY *v.* EWING AND OTHERS.

Trust—Failure of Trustees—Judicial Factor—Annuity—Discretion to Increase—Petition—Competency. A person by his trust-deed provided an annuity to his daughter of £50, which the trustees if they thought right were empowered to increase. The trustees declined to accept, and the daughter served to her father, and took possession of the estate. A judicial factor was afterwards appointed. Held that a petition by the daughter for increase of her annuity was incompetently brought, the proper course being to apply to the factor, who might, if he thought fit, apply to the Court for special powers to that effect. Question, whether the factor or the Court, on an application from the factor, could exercise the discretion reposed by the truster in his trustees.

This case came before the Court on a petition at the instance of Mrs Mackay, wife of Captain Mackay, and daughter of the late John Russell, Esq., of Balmaad, praying the Court to award her an annuity out of the trust-funds, and to authorise the judicial factor on the estate to pay it to her. Mr Russell died in 1819, leaving considerable property, both heritable and moveable, and also a trust-disposition and settlement appointing trustees to carry out the purposes of the trust. The truster, among other provisions, appointed his trustees to pay his daughter a free yearly annuity of £50 during her life, "or until she comes eventually to have possession of the trust-funds in virtue of the succeeding clause of the deed;" with power to his trustees, "if his funds would admit, and if they should think she has occasion for it, eventually to make some addition to said annuity, according as their own good judgment and discretion should suggest," The trustees declined to accept, and the petitioner served to her father, and entered into possession both of the heritable and moveable estate. She appointed her husband factor, and she remained in possession until 1840, when a judicial factor was appointed on the estate. Since that date four judicial factors have been appointed by the Court, and the estate is now under the management of Mr John Allan, solicitor, Banff. Answers were put in by Mrs Ewing, the petitioner's daughter, the leading beneficiary under the trust, who opposed the petition, on the ground that the petitioner and her husband were due large sums to the estate, on account of their intromissions, during the nineteen years of their management, and by the judicial factor, who, without opposing the petition, stated certain considerations that were proper for the Court to hold in view in disposing of it. The leading one of these was, that the petitioner had never accounted to him for her intromissions.

Last year, the Lord Ordinary (MURE) appointed the factor to pay the petitioner an annuity of £50, and this judgment was acquiesced in by Mrs Ewing. The petitioner afterwards moved for an increase to her annuity, which was again opposed by Mrs Ewing, on the same grounds as before. The Lord Ordinary, proceeding on a calculation as to what might be the probable results of an accounting between the factor and the petitioner for a period of her intromissions with the trust-funds, increased the annuity by £100, and appointed the factor to pay her a yearly annuity of £150. Against this interlocutor Mrs Ewing reclaimed; and maintained, in addition to the reason relied upon in the Outer-House, that the petitioner was indebted in large sums to the estate; that it was beyond the jurisdiction of the Court to grant the prayer of the petition, because it was incompetent either for the factor, or for the Court on an application from the factor, to exercise the discretionary power conferred by the truster on his trustees to raise the petitioner's annuity above £50, if they thought proper. The Court felt this to be a question of considerable difficulty and delicacy, but were saved consideration of it by holding that the prayer of the petition was altogether incompetent either as a step in the factory or as a separate proceeding. The proper course for the petitioner to have followed was to apply to the factor, who would consider the case, and who might apply to the Court for special powers to increase the annuity if he thought proper. If the factor refused the application, and declined to ask powers from the Court, the petitioner might then perhaps directly apply to the Court, but her course, in the first place, was to apply to the factor. The interlocutor of the Lord Ordinary awarding the additional sum of £100 was accordingly recalled. As to the sum of £50 which the Lord Ordinary had ordained the factor to pay under the petition which was now found to be incompetent, the Court did not think it necessary to interfere, as that sum was provided as an annuity to the petitioner by the trust-deed; and Lord Curriehill expressed a hope that no difficulty would be made by the factor as to the payment of that sum.

Counsel for the Petitioner—Mr Inglis. Agents—H. & A. Inglis, W.S.

Counsel for Mrs Ewing—Mr Shand and Mr Thomson. Agent—A. Morison, S.S.C.

Counsel for the Judicial Factor—Mr W. A. Brown. Agent—J. C. Baxter, S.S.C.

Wednesday, July 10.

MACALISTER, PETITIONER.

Entail—Improvement—Expenditure—10 *Geo. III.*, *c.* 51—9 *&* 10 *Vict.*, *c.* 101—11 *&* 12 *Vict.*, *c.* 36. Held that money borrowed by an heir of entail, and expended and charged on the estate under the Drainage Act 1846 (9 & 10 Vict. c. 101), cannot be constituted a burden on the estate, under the 16th sect. of the Entail Amendment Act.

This was a petition under the Entail Amendment Act (11 and 12 Vict., cap. 36) for leave to constitute and charge certain improvements executed by the petitioner on the entailed estate of Glenbar. By the 16th section of the Act it is provided—"That where an heir of entail in possession of any entailed estate, holden by virtue of any tailzie dated prior to the 1st day of August 1848, shall, whether prior or subsequent to the passing of this