clear that the residuary legatee cannot claim the fund.

The following interlocutor was pronounced:—

"The Lords having considered the Special Case as now amended at the bar, and heard counsel for the parties thereon, Find, decern, and declare that the bequest in favour of the person officiating for the time as schoolmaster in connection with the Established Church in the parish of Rothiemurchus, in the trust-disposition and settlement in the case mentioned, has not lapsed; and the first party, as residuary legatee, has no right to one-fourth part of the sum of £1800 in the case mentioned: Find the first party liable in expenses to the second parties, and remit to the Auditor to tax the account of said expenses and report."

Counsel for Party of the First Part—Rutherfurd. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Parties of the Second Part—Lee. Agents—Menzies, Soote, & Coventry, W.S.

Saturday, May 26.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

FERRIER'S TRUSTEES *v.* BAYLEY.

Superior and Vassal—Mid-Superiority—Singular Successors—Entry of Heirs—Conveyancing (Scotland) Act 1874, *sec.* 4.

Held (*diss.* Lord Gifford) that the proprietor of the *dominium utile* of lands, who was a singular successor of a former vassal, and who was infeft in the lands but not entered with the superior at the commencement of the Conveyancing Act of 1874, could not defeat the demand of the superior for payment of the casualty of composition due by a singular successor, by offering himself for entry in the character (which he also possessed) of the heir of the orginal investiture, on payment of the relief duty alone.

This was an action of declarator and for payment of a composition, raised by the trustees of the late Walter Ferrier, W.S., against George Bayley of Manuel, W.S. The question arose under the following circumstances:—Until 1832 the lands of Manuel belonged to Principal Baird, grandfather of the defender. He was duly infeft in them, and held of the late Walter Ferrier by tenure of feu-farm. The superiority was at the date of this case in the pursuers as testamentary trustees of Mr Ferrier. Principal Baird in 1832 sold to his son-in-law Isaac Bayley the *dominium utile* of the lands, and granted, on May 12, 1832, a disposition containing an obligation to infeft *a me vel de me*, and a procuratory of resignation and precept of sasine. Upon this precept Mr Bayley was infeft. He died in 1873, and his trustees made up a title to the lands by notarial instrument recorded 15th December 1873, and subsequently conveyed them to the defender George Bayley on 27th December 1873, he being infeft on 19th January 1874. Isaac Bayley did not enter with the superiors as vassal, but in 1868 Thomas Elder Baird was entered as vassal by precept of *clare constat* as eldest son and nearest lawful heir of Principal Baird, and was infeft. This was a voluntary entry by Mr Baird, the effect being that so long as he lived the pursuers could not call upon the defender to enter as vassal, the fee being already full. In January 1876 Mr T. E. Baird died, and his nephew George Bayley was his heir-at-law, and therefore heir under the original investiture in favour of his grandfather Principal Baird, while at the same time, as already mentioned, he was infeft in the *dominium utile* of the lands as singular successor of his grandfather. The summons concluded for declarator that in consequence of the death of Thomas Elder Baird, who was the vassal last entered and infeft in the lands of Manuel, under the operation of the law as it stood prior to the passing of the Conveyancing Act 1874, a casualty, being one year's rent, became due to the pursuers as superiors of the lands; that the casualty was still unpaid, and that the full rents, mails, and duties of the lands did, after the date of citation, belong to the pursuers until the casualty was paid.

The pursuers pleaded—"(1) The pursuers being superiors of the lands described in the summons, are entitled to decree of declarator as concluded for. (2) The defender having become, by virtue of the fourth section of the Conveyancing Scotland Act 1874, the vassal of the pursuers, and having refused to pay the composition which became due upon the death of the last entered vassal, the pursuers are entitled to decree for the sums concluded for, or for such other sum as shall be found to be the true and just amount of one year's rent, subject to the usual deductions, with expenses. (3) The pursuers are entitled to draw the full rents, maills, and duties of the said lands described in the foregoing summons from and after the date of the defender's citation. (4) The defender, as a singular successor in the lands described in the foregoing summons, is liable to the pursuers in a composition of one year's rent."

The defender pleaded—"(1) The pursuers are not in the position of parties entitled under the provisions of the Conveyancing Act 1874 to raise the present action. (2) The defender being the heir-at-law of the last entered vassal, and willing to enter or to pay the duty exigible on the entry of an heir, is not liable to pay a composition as a singular successor. (3) The sum sued for being greatly in excess of the rent of the lands of Manuel Miln, of which the pursuers are superiors, decree therefor cannot be pronounced."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh*, 21*st November* 1876.—The Lord Ordinary," &c., "Finds, decerns, and declares that, in consequence of the death of Thomas Elder Baird, Esquire, who was the vassal last entered and infeft under the operation of the law as it stood prior to the passing of the Conveyancing Act 1874, in All and Whole the mill of Manuel, called Manuel Mill," &c., "a casualty, being one year's rent, became due to the pursuers, as the late Mr Walter Ferrier's trustees, as superiors of the said lands, upon the 18th day of January in the year 1876, being the date of the death of the said Thomas Elder Baird, and that

the said casualty is still unpaid; and that the full rents, maills, and duties of the said lands of Manuel Mill and others," "after the date of this interlocutor, do belong to the pursuers, as superiors thereof, until the said casualty and the expenses of this process be otherwise paid to the pursuers, and decerns; and before further answer as to the petitory conclusions of the summons, appoints the cause to be enrolled, that the amount of one year's rent of said lands may be ascertained, reserving in the meantime all questions of expenses."

"*Note.*—This action raises a question of very general interest and importance as to the construction of the 4th section of the Conveyancing (Scotland) Act 1874. The question is whether a proprietor of lands who is a singular successor of a former vassal, and who was infeft in the lands but not entered with the superior at the commencement of the Act, such infeftment being declared by the statute to be equivalent to an entry with the superior by confirmation, can defeat the demand of the superior for payment of the casualty of composition due by a singular successor by offering the heir of the original vassal for entry by writ of *clare constat*, or by infeftment on a special service as heir, on payment of the relief duty alone. There are some specialties in the case which may require particular consideration, but I think that the general question, as I have stated it, is fairly raised, and must be decided.

"I do not think that the accident by which the defender held this double character at all affects the position of the parties, because the estates to which he would (prior to the commencement of the Conveyancing Act of 1874) have had a right in these two characters would have been entirely different. The estate to which he has right as the singular successor of Principal Baird is the *dominium utile* or the true property of the lands which he holds in virtue of the settlement of his father, who purchased them from Principal Baird, whereas the only estate which he could have taken as heir of his uncle T. E. Baird was the barren unsubstantial estate of mid-superiority created by Mr Isaac Bayley's base infeftment on the disposition from Principal Baird, which contained a double manner of holding and a procuratory of resignation and a precept of sasine; which infeftment had never been confirmed. The defender's position as regards the pursuers' demand, that he should enter with them as their vassal as the singular successor of Principal Baird, would have been substantially in principle the same if, instead of the defender himself, a third party had been the heir of T. E. Baird.

"Now, if the Conveyancing Act of 1874 had not passed, the following would have been the position of the rights and liabilities of the pursuers and defender. In the first place, the barren estate of mid-superiority which remained with Principal Baird after the sale to Mr Isaac Bayley, and which was taken up by Thomas Elder Baird as heir of his father in 1868, would have been defeasible at any time at the pleasure of Mr Isaac Bayley or his trustees or the defender, and might have been evacuated by any of them obtaining their respective infeftments confirmed by the pursuers as the proper superiors, or by their resigning on the procuratory in Principal Baird's conveyance notwithstanding the intermediate entry given by the pursuers to Mr T. E. Baird as heir of his father. (*Fullarton*, 22d Nov. 1833, 12 S. 117.)

"In the second place, the pursuers as superiors would now have been entitled to call upon the defender to enter with them as their vassal, and to pay the composition of a year's rent, as being the singular successor of Principal Baird, and to enforce that claim by a declarator of non-entry against him; and it is the fair and necessary deduction from the case of *Fullarton* that the intermediate entry of T. E. Baird would have formed no bar against such an action.

"But, in the third place, so long as the estate of mid-superiority referred to was not evacuated, the defender would have been entitled to meet the superior's demand by putting forward the heir of the original disponer, that is, the heir of the original investiture, to enter in that character, although the superiors could not have compelled the heir to enter. It is hardly necessary to refer to authorities in support of these propositions; but as this case may go elsewhere I think it right to notice that they are distinctly affirmed as being the recognised rules of law by Professor Bell in his Principles, on the authority of the cases of *The Magistrates of Musselburgh*, 21st Feb. 1804, Mor. p. 15,038; *Hill* v. *Mackay*, 5th Feb. 1824, 2 S. 681; *Piggot* v. *Colville*, 9th Dec. 1829, 8 S. 213; and *Dundas* v. *Drummond*, 10th Feb. 1769, Mor. p. 15,035. Professor Menzies, p. 814, and Professor Mongomerie Bell, p. 1055, state the law in similar terms; and although Mr Duff, p. 217 (who, however, does not notice the case of *Hill* or of *Piggot*) indicates a somewhat different opinion, the law as stated by Professor Bell was fully recognised in the case of *Hyslop* v. *Shaw*, 13th May 1863, 1 Macph. 535, which was decided by the whole Court. For although the point there decided (by a majority of nine to four of the whole Judges) was, that where a party had disponed lands to a purchaser by a conveyance, with an *a me vel de me* holding on which the purchaser was infeft, who, without being confirmed, paid the feu-duties for some years to the superior, the disponer was not by that unconfirmed transference of the feu liberated from liability for the prestations of the feu-right; and that the superior was not, by accepting payment from the purchaser, barred from claiming against the disponer—six of the Judges in the majority, viz., the Lord Justice-Clerk (Inglis), and Lords Cowan, Deas, Benholme, Neaves, and Mackenzie, and one of the Judges in the minority, viz., Lord Curriehill, expressly stated the law applicable to the point now under discussion to be, that the heir of a disponer who had granted a disposition with a double manner of holding was entitled to enter with the superior so as to save the disponee from the payment of the composition of a year's rent. None of the other Judges indicated any dissent from the proposition so laid down; and the majority of the Court plainly considered that state of the law to be an important element in their judgment. It is thus quite clear that if an action of declarator of non-entry had been now brought against him by the pursuers, the defender George Bayley, but for the provisions of the Conveyancing Act of 1874, would have obtained absolvitor from the conclusions of such action by offering to enter as heir of his uncle Thomas Elder Baird, and the pursuers could not have insisted upon his entering as

a singular successor or paying the composition of a year's rent.

"This being so, the general question to be solved is, whether the Act of 1874 has made any, and if so what, alteration upon the respective rights and liabilities of parties in the position of the present pursuers and defender? The question turns entirely upon the construction of section 4 of the statute, and of Schedule B appended to the statute. Section 4 is divided into four sub-sections. Sub-section 1 abolishes renewal of investiture, and declares it to be incompetent for the superior to grant any writ by progress, with an exception in favour of certain writs, and, *inter alia*, writs of *clare constat*. Sub-section 2 provides 'that every proprietor who is at the commencement of this Act, or thereafter shall be, duly infeft in the lands, shall be deemed and held to be as at the date of registration of such infeftment in the appropriate Register of Sasines duly entered with the nearest superior whose estate of superiority in such lands would according to the law existing prior to the commencement of this Act have been not defeasible at the will of the proprietor so infeft, to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice.'

"Now, before considering the remainder of this enactment, it is desirable to see what the effect would have been according to the then existing law and practice, if on the 1st of October 1874 the pursuers had granted in favour of the defender George Bayley a writ of confirmation of his infeftment which had been recorded in January 1874. That confirmation would, in the first place, have confirmed the defender's own base infeftment, and all the prior base infeftments, in the property of the lands, up to and including the infeftment taken by Mr Isaac Bayley on the precept in Principal Baird's disposition. In the second place, it would farther have evacuated the estate of barren mid-superiority, which had remained with Principal Baird after the sale of the lands to Mr Isaac Bayley, and which was afterwards taken up by Mr T. E. Baird in virtue of his entry in 1868, but which had all along been defeasible at the will, first, of Mr Isaac Bayley, afterwards of his trustees, and finally of the defender George Bayley. In the third place, it would have entirely liberated and absolved Principal Baird and his heirs from all liability for the feu-duties and prestations contained in the original feu-right, and would have transferred to Mr George Bayley the sole and undivided liability for these feu-duties and prestations. And, in the fourth place, it would have operated as a complete discharge of all casualties and arrears of feu-duties and other prestations due and payable at and prior to the date of the confirmation, unless in so far as these were expressly reserved in the charter.

"In so far as regards the first and second of these effects, viz., the confirmation of all the base infeftments and the evacuation of the defeasible estate of mid-superiority which then existed in the person of Thomas Elder Baird, I think there is nothing in any part of the statute to prevent these effects from following the confirmation which the statute implies in every registered infeftment. But as regards the other two effects of confirmation, the statute contains express provisions and qualifications. Thus, in a subsequent part of sub-section 2 it is provided 'that notwithstanding such implied entry, the proprietor last entered in the lands, and his heirs and representatives, shall continue personally liable to the superior for payment of the whole duties affecting the said lands, and for performance of the whole obligations of the feu, until notice of the change of ownership of the feu shall be given to the superior.' And in sub-section 3 it is enacted that 'the implied entry shall not prejudice or affect the right or title of any superior to any casualties, feu-duties, or arrears of feu-duties which may be eligible from the lands at and prior to the date of entry,' . . . . 'but provided always that such implied entry shall not entitle any superior to demand any casualty sooner than he could by the law prior to this Act or by the conditions of the feu-right have required the vassal to enter or to pay such casualty irrespective of his entry.' And in sub-section 4 it is declared that such implied entry shall not be pleadable in defence against the superior's action for a casualty. The meaning of these sub-sections, when read together, is, in my opinion, that the entry by confirmation which the statute declares shall be implied in the infeftment of every proprietor infeft in lands at or after the commencement of the Act, shall have the effect of for ever extinguishing the defeasible estate of mid-superiority created by the original conveyance from a former vassal with a double manner of holding; that notwithstanding the implied entry the superior is not to be deprived of his right to the composition which he would have been entitled to demand had he actually granted a writ of confirmation, but that. in the event of any person holding the position of an entered vassal being in life, whether he was the original disponee or his heir or a liferenter, or any other person, the superior's right to demand payment of a casualty should be postponed until the death of such entered vassal.

"Now, had the Act stopped there, I should have had little hesitation in holding that the defeasible estate of mid-superiority which stood in the person of T. E. Baird was, from the 1st October 1874, so completely evacuated that on his death in 1876 nothing remained in his person which could be taken up by his heir either by service or by precept of *clare constat* from the superior; and that the defender George Bayley would have had no good defence against the pursuer's demand for payment of a casualty as the singular successor of the original vassal in the lands. The defender, however, maintains that in the present case this result is excluded by the language of sub-section 4, which must therefore be carefully and critically examined.

"That sub-section provides that 'no lands shall after the commencement of this Act be deemed to be in non-entry; but a superior who would but for this Act be entitled to sue an action of declarator of non-entry against the successor of the vassal in the lands, whether by succession, bequest, gift, or conveyance, may raise in the Court of Session against such successor, whether he shall be infeft or not, an action of declarator, and for payment of any casualty exigible at the date of such action, and no implied entry shall be pleadable in defence against such action.' . . . . 'And the summons in such action may be in or

as nearly as may be in the form of Schedule B hereto annexed.' In the schedule the person who stands as pursuer is 'A (*design him*), immediate lawful superior of the lands (or subjects) after described (or referred to), and duly infeft therein;' and the defender is simply mentioned as 'B (*design him*).' From the terms of sub-section 4, already cited, it is clear that the defender 'B' is to be the 'successor of the vassal in the lands, whether by succession, bequest, gift, or conveyance,' against whom the pursuer, as superior, would, but for the Act, have been entitled to sue an action of declarator of non-entry. The conclusions as given in the schedule are, first, for declarator 'that, in consequence of the death of C (*or otherwise as the case may be*), who was the vassal last vest and seised in All and Whole the lands of X,' . . . 'a casualty, being one year's rent of the lands, became due to the said A, as superior of the said lands, upon the day of , being the date of the death of the said C (or) the date of the infeftment of the said B in the said lands of X (*or otherwise as the case may be*), and that the said casualty is still unpaid;' and then follow conclusions as to the rents during non-payment of the casualty, and a petitory conclusion for payment of a year's rent.

"Now, the first observation which occurs upon the language of the schedule, and the enacting words of sub-section 4, after the declaration that no lands shall after the commencement of the Act be in non-entry, is that the person who is to be entitled to raise an action of declarator and for payment of the casualty is a superior who would but for the Act be entitled to sue an action of declarator of non-entry against the successor of the 'vassal in the lands, whether by succession, bequest, gift, or conveyance.' But if the explanation which I have given in a former part of this note as to the relative positions and rights of the pursuers and defender according to the law and practice prior to 1st October 1874 be correct, it does not admit of doubt that the pursuers but for the passing of the Act would have been entitled on the death of Thomas Elder Baird, to sue an action of declarator of non-entry against the 'successor of the vassal in the lands,' *i.e.*, against the defender as the singular successor of Principal Baird, the former vassal. The defender, however, maintains that, according to the sound construction of sub-section 4, read in connection with the words of Schedule B, the person there referred to as 'the vassal in the lands,' whose successor might have been sued in a declarator of non-entry, and who is to be the defender in the new action substituted therefor by the statute, is the person who had been last recognised in that character by the superior, viz., Thomas Elder Baird; and that as the defender is in no respect the successor of Thomas Elder Baird except as being his heir to the barren mid-superiority of the lands, the superiors cannot under the new law direct their action of declarator and for payment of a casualty against him as a singular successor of the last-entered vassal, but only as his heir, and as he has all along been willing to enter as heir, the present action was uncalled for and unnecessary. But this argument of the defender proceeds, in my opinion, on a mistaken reading both of the Act and of the schedule. There is nothing in the schedule to indicate that 'B,' who is to stand defender in the action, is necessarily the successor, either as heir or by bequest, gift, or conveyance of 'C,' the last-entered vassal, in consequence of whose death the casualty has emerged. The casualty is, according to the structure of the summons, to be paid by 'B,' not as the successor of 'C,' but on the occasion of the death of 'C,' in consequence of which the superior has no longer an entered vassal.

"In order rightly to understand this question it is necessary to bear in mind that by sub-section 2 the defeasible estate of mid-superiority which alone stood in the person of Thomas Elder Baird as at 1st October 1874 was then absolutely extinguished, so that as regards the lands included in his own infeftment the defender George Bayley thereafter occupied the position of being the singular successor of Principal Baird, the former vassal in these lands, and of being entered as such singular successor with the pursuers as his superiors. In short, the implied statutory confirmation made public the defender's base infeftment which had flown from Principal Baird, the former vassal. It appears to me that one of the main objects of this statute was not only to facilitate conveyancing, but to abolish the creation of mere technical base fees and mid-superiorities which, by a rigid adherence to old feudal forms, had complicated and encumbered progresses of titles without conferring any real benefit upon any of the parties concerned. And it seems to follow as one necessary result of the provisions of the Act, that the right of a superior to the composition of a year's rent at the entry of a singular successor shall be no longer liable to be evaded by an arrangement between the disponee and the heir of the disponer, by which the latter should ignore the disposition of the substance of the lands granted by his ancestor, and maintain as against the superior the shadowy character of heir to a barren and merely technical estate of mid-superiority. The action therefore may, in my opinion, be competently directed against the party who is truly the successor of the former vassal in the property of the lands.

"But even were it necessary, in construing the statute and the schedule, to hold that the defender in an action like the present must be the successor of the person last entered as vassal by the superior, I should be of opinion that the defender is truly the successor of T. E. Baird in the lands themselves, because, as was forcibly pointed out by Lord Moncreiff in the case of *Fullarton* already referred to, the heir of a disponer who takes an intermediate entry by precept of *clare constat* after his ancestor has sold the property to a purchaser is truly *eadem persona* with his ancestor, and must be so regarded in all questions between the purchaser and the superior.

"On the whole matter, then, I am of opinion that the effect of the statute in reference to the present case is — (1) That the defeasible mid-superiority held by T. E. Baird was absolutely and for ever extinguished; (2) That from and after 1st October 1874 the lands were held by Mr George Bayley, the defender, of the pursuers as his immediate lawful superiors, as the singular successor of Principal Baird, the former vassal, in virtue of the implied confirmation by them of his infeftment, which flowed from the precept of sasine contained in the original disposition granted by Principal Baird; (3) That owing to

an intermediate entry having been given by the pursuers in 1868 to T. E. Baird as heir of Principal Baird by precept of *clare constat*, their right as superiors to demand a casualty of a year's rent from the defender, as singular successor of the Principal was postponed until the death of T. E. Baird; and (4) That the pursuers, who in accordance with the law as it existed prior to 1874 would have been entitled to sue a declarator of non-entry against the present defender as the singular successor of the vassal in the lands, are now entitled to raise against him the present action of declarator and for payment of the casualty due by a singular successor, and to prevail. But as the question is a novel one, and has not been unreasonably litigated by the defender, I think that the rents should not be decreed to belong to the pursuers from the date of citation, but only from the date of this interlocutor.

"It will be observed that my opinion has been very much influenced by the consideration that in consequence of Mr Bayley being infeft in the lands the confirmation implied in his infeftment extinguished the mid-superiority which had existed in Mr T. E. Baird. Whether I might have arrived at the same result if Mr Bayley had not been infeft is a question on which I express no opinion.

"The case is appointed to be enrolled in order that the precise amount of the year's rent payable as composition may be ascertained. In the meantime all questions of expenses are reserved."

The defender reclaimed.

Authority quoted—*Fullarton*, 22d Nov. 1833, 12 S. 117.

At advising—

Lord Ormidale—The Lord Ordinary has correctly stated that the question to be determined in this case is, Whether, having regard to the provisions of the Conveyancing (Scotland) Act 1874, the demand of a superior for the casualty of composition from a singular successor infeft in lands as proprietor at the commencement of the Act can be defeated by his offering for an entry the heir of the original vassal, who had entirely divested himself of all interest in the lands except a bare and valueless right of mid-superiority?

In dealing with this question it must be borne in mind that the Conveyancing Act was passed for the purpose of dispensing with much useless procedure which was previously necessary, and thereby simplyfying and facilitating the transfer of the land.

It is unnecessary to enter into a review of the state of the law and practice relating to the disputed question prior to the passing of the recent Act, as it was acknowledged by both parties at the debate that the Lord Ordinary has done this satisfactorily and correctly in the note to his interlocutor. I assume, therefore, with the Lord Ordinary, that prior to the passing of the recent Act the offer which the defender in this case has made, in order to meet the pursuer's demand for payment of the casualty of composition as on the entry of a singular successor in the lands in question, would have been sufficient. At the same time, however, it can scarcely be denied, I think, that in truth such an offer would have been more of the nature of a technical manœuvre or device than anything else, resorted to for no other purpose than to evade payment of a casualty otherwise fairly due to the superior. Neither can it, I think, be disputed that such a mode of meeting the superior's claim was calculated in its results to complicate and obstruct rather than facilitate the transfer of land. But although all this may be so, it does not necessarily follow that the defender may not be right and the pursuers wrong in the present controversy. This depends upon what ought to be held to be the true import and effect of the recent Conveyancing Act, and particularly of the provisions in its 4th section.

In examining the terms of that section of the Act, including its sub-division, as bearing on the present case, it is important to keep in mind that the mid-superiority left with Principal Baird when he disponed the lands in question to the defender's father, the late Mr Isaac Bayley, was such as might be put an end to at any time by the party in right of the *dominium directum*, or, in other words, at the will of the defender as now the proprietor of the lands. The defender's father, in the first instance, became proprietor by disposition from Principal Baird containing a double or alternative manner of holding, a holding *a me vel de me*. So long as this was allowed to continue unchanged the holding was to be considered a base one, that is, a holding of the mid-superior Principal Baird, and after his death his son and heir Mr Thomas Elder Baird.

Such was the state of matters at and prior to the Conveyancing Act of 1874 coming into operation. But it is undoubted, and was not questioned at the debate, that the vassal or proprietor of the lands, that is, Mr Isaac Bayley, who was Principal Baird's disponee, in the first instance, and on his death the defender Mr George Bayley, his son and heir, in the second instance, would, according to the general rule, and supposing there was no interposed bar, have been entitled to put an end to the mid-superiority which was successively in Principal Baird and his son at any time he pleased by entering with the over-superior, who in the present case was Mr Ferrier, and after him his trustees the pursuers. And whether this has not been done by the operation of the Conveyancing Act will be immediately seen, and is really the question which has to be decided.

But before taking up that question, it is proper I should notice the defender's argument, to the effect that, in the circumstances of the present case, there is an interposed bar which before the recent Act came into operation would have prevented the vassal entering with the over superior, and therefore must be held also to prevent the implied statutory entry taking effect. It was assumed in the argument for the defender that in consequence of the vassal or proprietor of the lands for the time getting Mr Thomas Elder Baird after the death of his father, the Principal, to enter with the over-superior, he and his successors were and are barred *ex contractu* from thereafter entering themselves with the over-superior, or, in other words, converting their private or base holding into a public one. It appears to me that there is no foundation for this assumption; and I am the more emboldened to say so considering that it does not seem to be covered either in fact or law by anything in the record. It is not even averred in the record that Mr Thomas Elder Baird, although after his father's death he entered with the over-superior, did so at the request of or in implement of any

contract or arrangement with the vassal or proprietor of the lands. I am quite unable therefore to see how any bar or impediment was interposed to prevent the true vassal or proprietor himself entering with the over-superior whenever he pleased, seeing that he always continued to have right to his alternative or double manner of holding, and that his changing it into a public one could not possibly prejudice Mr Thomas Elder Baird or any one else. Neither Principal Baird nor Mr Thomas Elder Baird or any other party had an interest to object to the true vassal or proprietor entering with the over-superior at any time he pleased, and so putting an end to the mid-superiority. Whether this has not been done by operation of the recent Conveyancing Act depends upon the view that may be taken of its provisions, which will now be examined.

Sub-division 2 of section 4 of the Act contains the first provision of any importance touching this matter. It enacts that the proprietor who at the date of the Act is infeft in the lands shall be held to be as at the date of the registration of his infeftment duly entered with the nearest superior whose estate of superiority in such lands would, according to the law existing prior to the commencement of the Act, have not been defeasible at the will of the proprietor so infeft, to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice. Applying this enactment to the present case, and in particular to the facts—(1) That the defender Mr George Bayley was the proprietor of the lands, having his infeftment duly registered at and prior to the recent Act coming into operation; and (2) that his nearest superiors whose estate of superiority would not, according to the law existing prior to the commencement of the Act, have been defeasible by the defender as proprietor infeft, are the pursuers, it necessary follows that he must be held to be entered with them as the over-superiors, and consequently that the mid-superiority was thereby evacuated and put an end to. And if this be so, it also necessarily follows that there is now no longer any room or opportunity for the defender tendering himself or any one else as heir to a mid-superior whose right and title are entirely gone. Nor am I able to find anything in other parts of the Act repugnant to the views I have now expressed.

It was no doubt maintained that the pursuers' present claim is inconsistent with the concluding portion of sub-division 3 of section 4 of the Act, whereby it is provided that the implied entry referred to in the preceding sub-division "shall not entitle any superior to demand any casualty sooner than he could by the law prior to this Act." Founding on this provision, it was argued for the defender that because by the law prior to the Act it would have been competent to tender for an entry the heir of the deceased mid-superior, and so meet the pursuers' demand for payment of a composition, to give effect to the demand now would be contrary to that provision. It appears to me that this argument is fallacious, and proceeds on a misapprehension of the true object of the provision, which was not that suggested, but merely to prevent the over-superior insisting, in virtue of the statutory implied entry, on payment of a composition before the death of the mid-superior who had prior to the Act been held to fill the fee. Accordingly, if the pursuers had, in respect of the implied statutory entry of the defender Mr George Bayley on 19th January 1874, the date of the registration of his infeftment, demanded immediate payment of a composition, the answer to such a demand that prior to the Act it would not be due sooner than the death of Mr Thomas Elder Baird, which did not happen till January 1876, would have been irresistible under the provision referred to. Such it appears to me was alone the object of the provision referred to, and as it has been duly observed in the present instance the argument of the defender cannot avail him. In any other view, and were the provision interpreted as the defender says it ought, the enactment relating to an implied entry might be in a great measure, if not entirely, frustrated.

The only other point in the argument for the defender which has not been well and sufficiently met in the note of the Lord Ordinary is the suggestion which I understood his counsel to make, that the implied entry in the present case must be held to relate, not to the true owner of the lands or *dominium utile*, but to the heir succeeding or entitled to succeed to the mid-superiority. But this could not possibly be so, for the statute expressly enacts (sub-division 2 of section 2) that it is the proprietor "who is at the commencement of this Act, or thereafter shall be, duly infeft in the lands," who "shall be deemed and held to be as at the date of the registration of such infeftment in the appropriate Register of Sasines duly entered with the nearest superior whose estate of superiority in such lands would, according to the law existing prior to the commencement of this Act, have not been defeasible at the will of the proprietor so infeft, to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice." Now, it is too obvious to admit of mistake, I think, that the true owner here referred to is the owner proprietor duly infeft in the lands, and not any mid-superior having no right at all to the lands, and whose right of superiority is so worthless as to be altogether illusory. Besides, there are in the same sub-division of section 2 of the Act references in such a way to "superior" and "over-superior" as to show, if anything were necessary beyond what has been already stated, that by "proprietor" is exclusively meant the *verus dominus* of the lands, or party in right of the *dominium utile*.

On the whole, and chiefly for the reasons now adverted to, I have no hesitation in concurring with the Lord Ordinary in the result at which he has arrived; and am therefore of opinion that his interlocutor should be adhered to.

Lord Gifford—I have found this case to be attended with great difficulty, and it is with some hesitation, after the opinion which Lord Ormidale has just delivered, and which is in accordance with the view of the Lord Ordinary, that I venture to differ from the conclusion at which the Lord Ordinary and Lord Ormidale have arrived.

I have ultimately come to be of opinion, however, that the mode in which the title of the defender has been made up in the present case does not, under the provisions of the recent statute, render him liable in a greater or different casualty to the superior than would have been legally exigible under the old law or than would have been

exigible had he made up his title under the statutes in any other legal and competent form; and as I think—indeed as I have no doubt whatever—that he could have legally completed his title so as to be only liable to the superior in relief duty—that is, in a duplicand of the feu—I do not think that the superior is entitled to exact a full year's rent of the subject, being the composition exigible under the old law on the entry of a singular successor. In a single word, the ground of my opinion is, that the provisions of the Conveyancing (Scotland) Act 1874 were only intended to shorten and simplify the modes of making up the titles of proprietors, and were not intended in any degree to enlarge the rights of superiors or to enable superiors to demand from their vassals, in whatever mode the vassal's title was completed, any other or different casualty than such superior could have exacted had the Act in question never been passed. The Act is a mere Conveyancing Act, intended only to simplify titles, and not to affect the pecuniary rights of either superior or vassal. The only exception, is that in certain cases the vassal is empowered to purchase the superior's casualties. In other words, I think the true question in the present case, and in all similar cases under these statutes (I mean in questions with superiors), is not, In what mode has the vassal completed his title? but, What duties or casualties or payments could the superior have exacted under the old law supposing the vassal to have made up no title at all? It appears to me that the true construction of the statute is, that as, on the one hand, the superior's rights are in no way to be prejudiced or injured by reason of the vassal availing himself of the new statutory facilities for transferring land and of completing titles to land, so, on the other hand, the superior's rights should not be enlarged or the vassal put in a worse condition with the superior by reason of the use of the statutory privileges.

I shall explain in a few words the view which I take of the relative position and rights of the parties in the present case. The pursuers, Ferrier's Trustees, are the undoubted superiors, proprietors of the permanent *dominium directum*, and the defender and his authors are the proprietors of the *dominium utile*. The subjects are held in feu, the entry of singular successors being untaxed, and the property or *dominium utile* belonged, prior to 1832, to the Rev. Dr Baird, Principal of the University of Edinburgh, who was then the entered vassal. In 1832 Principal Baird conveyed the lands to the late Isaac Bayley, who was his son-in-law, having married the daughter of Principal Baird, and Mr Bayley was base infeft in the usual way on a disposition which contained a double manner of holding. Isaac Bayley did not enter in any way with the superior—Principal Baird, the disponer, continuing sole entered vassal. On the death of Principal Baird the superior appears to have demanded an entry, and instead of Mr Isaac Bayley entering as vassal, a precept of *clare constat* was granted on 26th Dec. 1868 by the superiors Ferrier's Trustees in favour of Thomas Elder Baird, advocate, the only son and heir-at-law of Principal Baird, and upon this precept Thomas Elder Baird was infeft, and thus became the full entered vassal in the subjects under the present pursuers.

Now, it is undoubted that this mode of filling the fee was perfectly legal and valid. The superior could ask no more, and although Isaac Bayley, and not Thomas Elder Baird, was the real proprietor of the *dominium utile*, and Mr Baird had only a bare and nominal mid-superiority, with this the superiors had no concern. The fee was full in Mr Baird's person.

Mr Isaac Bayley died on 17th April 1873, leaving a trust-disposition and settlement, conveying, *inter alia*, the subjects in question to his trustees, and these trustees, in terms of the settlement, conveyed the property to the present defender George Bayley, who is Isaac Bayley's only son and heir-at-law, by disposition dated 27th Dec. 1873. On this deed the defender George Bayley was infeft by registration on 19th Jan. 1874. At the date of this infeftment the Conveyancing Act of 1874 had not passed, and, as the law then stood, the infeftment in favour of George Bayley was merely a base infeftment, the nominal superior being Thomas Elder Baird, who was then still alive, and who was the only entered vassal with the pursuers. Neither the infeftment of Isaac Bayley nor that of the present defender George Bayley was ever confirmed or in any way whatever recognised by the pursuers as superiors. So stood matters till 1st Oct. 1874, when the Conveyancing Act of that year came into operation, and I think it can hardly be said that at that date, the date of the commencement of the Act, any right whatever thereby emerged to the superior. Thomas Elder Baird was then alive, and during his life the fee was full.

Thomas Elder Baird, however, the sole entered vassal, died on 18th January 1876, and thereupon, according to the old law, the subjects would have been in non-entry, and the pursuers as superiors would have been entitled to demand an entry in common form. Now, I think it important to consider what would have been the position and rights of the defender George Bayley under the old law, that is, if the Conveyancing Act of 1874 had not passed. George Bayley was not only the son and heir-at-law of Isaac Bayley, but he was the grandson and heir-at-law of Principal Baird, and the nephew and heir-at-law of Thomas Elder Baird, the last entered vassal. What were his rights as such?

Now, it was admitted, and it could not be disputed for a moment, that under the old law the defender George Bayley would have been entitled to enter with the pursuers as heir-at-law of his uncle Thomas Elder Baird, and that upon payment of a simple duplicand of the feu-duty. The form of entry would have either been by precept of *clare constat*, which is the usual way, or by special service, but in either case the superior could have demanded and exacted no more than a duplicand of the feu-duty. All this is too clear for argument, and was conceded at the bar. It is also established by many cases, some of which are referred to by the Lord Ordinary. But if this be so, I think it follows that what would have been competent under the old law is competent still under the new and existing law. I can see nothing incompetent in Mr George Bayley now obtaining a precept of *clare* from the superior as heir-at-law of his uncle Thomas Elder Baird in the subjects in question, and infeftment on that precept would make the defender full entered vassal as his uncle's heir, or

if the superiors decline to grant such precept, George Bayley may now serve heir in special to his uncle in the subjects, and infeftment by registration of the decree of service will have the same effect. There is nothing in the statute of 1874 which makes this course unlawful or incompetent, and no ground of incompetency has ever been suggested. No doubt such title would be a double or a cumulative title, but there is nothing incompetent in making up double titles, which are often both necessary and expedient, and it will surely not be maintained that the Conveyancing Act of 1874 prohibits cumulative or corroborative titles. It would be a very serious matter indeed if it were held that the Conveyancing Act of 1874 made it illegal or impossible for a purchaser of land to make up a corroborative title through the heir of the seller. It is out of the question to hold this, and such a view was not even suggested. Now suppose George Bayley to have made up such title. He offers to do so, and although I think he should have done so by this time, it is still competent. In these circumstances, what are the rights of the superiors? I am of opinion that they can only demand from him relief duty, that is, a duplicand of the feu-duty, and nothing more.

For George Bayley is not either in law, or in reason, or in fact, a singular successor in the subject. He is the heir of the last entered vassal, and he is entitled to take up the subject as such; and he is also heir-at-law of Principal Baird, the immediately preceding, or, as I may say without going further back, the original vassal. Isaac Bayley was never an entered vassal at all—never in any way recognised or known to the superior—and yet it is only by considering him as the vassal that the pursuers have any colour for demanding composition on the entry of a singular successor. No doubt it is true that Isaac Bayley had a conveyance to the subject, and that the defender mediately has a conveyance from him, but with this separate title the superiors have no concern, and they cannot compel the defender to produce it or to found upon it unless he chooses to do so; and if the defender has another or independent title, as he undoubtedly has, why should he not be allowed to use it? In a question with the superior the defender may plead any legal and sufficient title which he pleases, and which he really possesses. He may, if he chooses, take his stand upon his title as heir, and if that is a good and sufficient title, which I think it is, the superior cannot compel him to part with it or renounce it, and to put forward some other title of a totally different kind. The very object of double or cumulative titles is to enable the holder of them to plead upon any one of them which may be sufficient for the purpose. Nor do I think it is of any consequence which of two or more independent titles, all equally legal and competent, happen to be made up first.

Supposing that the defender and Isaac Bayley's trustees had not taken infeftment since Isaac Bayley's death, but that their right had remained personal, pendent upon Isaac Bayley's settlement —not followed by infeftment of any kind—I suppose it can hardly be doubted that in such a state of matters the pursuers as superiors could not have succeeded in their present demand. They never could have compelled the defender to take infeftment on his father's deed, that is, to register it in the Register of Sasines. Nor could the defender have been compelled to register the trustees' conveyance to him of the present subjects. He was entitled to disregard both his father's deed and the disposition by the trustees altogether, and to make up his sole and only title as heir-at-law of his uncle Thomas Elder Baird. In that case it seems to me clear that the pursuers' present demand would have been absolutely nowhere. The defender would have been the pure heir of the last-entered vassal and nothing else, and as such liable to the superior in relief duty only. I do not think the case is different from the mere circumstance that a base title was made up through Isaac Bayley's trust-deed. That base title was not made up for behoof of the superiors, and the benefit of it cannot be claimed by them.

No doubt it is true—and of course it is upon this circumstance that the pursuers' whole case rests—that the Conveyancing Act of 1874 declares (section 4, sub-section 2) that every infeftment, even when expede before the Act passed, shall imply an entry with the superior, to the same effect as if the superior had granted a writ of confirmation; but surely this is a provision for the benefit of the vassal and not for the benefit of the superior. It is to aid the vassal in making up the titles, and not in any way to benefit or advantage the superior. Accordingly, the same sub-section reserves the superior's rights notwithstanding the implied entry, and the next sub-section (sub-section 3) expressly declares that "such implied entry shall not prejudice or affect the right or title of any superior to any casualties, feu-duties, or arrears of feu-duties which may be due or exigible in respect of the lands;" and by the following sub-section (sub-section 4) the whole superior's rights as on non-entry are reserved and provided for, although the technical state of non-entry is abolished.

I humbly think, in accordance with what seems to me to be both the words and the spirit of the statute, that the superior's rights are neither to be better nor worse by the provision which the statute makes for "implied entry." The implied entry "shall not prejudice or affect" his rights. If it does not prejudice him, neither can it benefit him, for that would be "affecting his rights."

There is a peculiar hardship in the present case, for at the date when the disposition in the defender's favour was recorded it could have no effect such as now contended for by the pursuers. The Act of 1874 and its supposed effect could not have been anticipated, and I really have some confidence in thinking that the effect contended for by the pursuers could not possibly have been contemplated by the Legislature. In future cases it will generally be easy to defeat superiors' claims like the present by avoiding infeftment or by taking infeftment only base *de me*, and thus rendering it incapable of being confirmed or made public, and thus preventing entry from being implied. Of course a base title gives exactly the same security to the purchaser as a public one. But I should deeply regret such a result, for I think it would introduce considerations and difficulties and devices in making up titles which it was the very object of the Conveyancing Act of 1874 to remove for ever from the sphere of conveyancing. I am for giving the superiors in the present case merely the relief duty or duplicand

feu, the defender of course instantly completing his title as Thomas Elder Baird's heir, which, as already mentioned, I think he should have already done.

LORD JUSTICE-CLERK—My views on this difficult and important question have varied, both during the discussion of it and in the course of the consideration which it has since received. But I have ultimately come to coincide in opinion with Lord Ormidale, and I shall shortly state the reasons which have led me to do so.

The real question which is presented to us seems to be, whether the provisions of the 4th section of the Conveyancing Act 1874, in the opening enactment of its 2d sub-section, were intended merely to confer a benefit on persons entitled to the *dominium utile* of lands, which they might use or not use as they thought fit, or whether they were intended to establish and determine for all purposes and effects the feudal relation between superior and vassal, excepting in so far as special provision is otherwise made in this statute.

I have come to be of opinion that, whatever may be the ulterior or collateral effects of the enactment, this section provides absolutely for the effect which is to be given to any infeftment in lands proceeding on a disposition containing a double or alternative holding, and this not at the will or option of the person so infeft, but to all intents and purposes.

The facts to which our opinions apply are, as far as they are material to the present question, simple enough, but they require to be accurately appreciated. The defender is the disponee under a disposition containing a double manner of holding, granted by the trustees of the deceased Mr Isaac Bayley, dated the 27th day of December 1873. He recorded this disposition in the Register of Sasines on the 19th day of January 1874. Mr Isaac Bayley's author held under the pursuer as his immediate superior, and, of course, prior to the passing of the Conveyancing Act of 1874, his infeftment created in his person a base fee only, held of the granter as his superior, and could only become a public holding under the *a me* alternative of the conveyance by the disponee obtaining a charter from the over-superior. In the interval the mid-superiority remained feudally in full force, and if the sub-vassal had become by inheritance entitled to the mid-superiority he might have extinguished the base fee created by his recorded disposition, and held the property absolutely under his title as heir of the last-entered vassal.

The mid-superior died after the passing of the Conveyancing Act, and but for the provisions of that statute the fee would then have been in non-entry. The defender is not only disponee, but is the heir of the party in right of the mid-superiority, and under the law as it formerly stood he might either have made up his title as heir, paying the ordinary duties, or have obtained a charter of confirmation from the superior, in which case he must have paid a composition as a singular successor. He has himself made up no title at all, but the superior maintains in this action that by virtue of the subsection of the statute in question the defender has already entered as a singular successor; that the mid-superiority has been extinguished ever since the death of the last vassal; and that the singular successor must now pay the appropriate composition. As I have said, I think this contention is well founded, and a very short commentary on the provisions of this fourth section of the statute will indicate the grounds on which I come to that conclusion.

There can be no doubt that the primary object of the 4th section of this statute, on which the question turns, was to confer a benefit on persons holding the substantial interest in the property of lands, by abolishing some, at all events, of the cumbrous and expensive writs by progress which were previously necessary in the completion of a feudal title. The 1st sub-section of this 4th clause abolishes absolutely the necessity for obtaining from any superior a writ by progress, and, excepting charters of *novodamus*, precepts or writs from Chancery, or of *clare constat*, or of acknowledgment, prohibits superiors from granting them.

The ground being thus cleared by this very comprehensive enactment, the 2nd sub-section proceeds to supply the place of the abolished writs, and the sub-section commences with these words—"Every proprietor who is at the commencement of this Act, or thereafter shall be, duly infeft in the lands, shall be deemed and held to be as at the date of the registration of such infeftment in the appropriate Register of Sasines duly entered with the nearest superior whose estate of superiority in such lands would, according to the law existing prior to the commencement of this Act, have been not defeasible at the will of the proprietor so infeft, to the same effect as if such superior had granted a writ of confirmation according to the existing law and practice."

It is perhaps to be regretted that the definition of the superior in this clause should have been expressed in this negative form. But the meaning is not doubtful; it means, I apprehend, that any infeftment such as that on which the defender possesses, which previously required in order to render the right complete and public, confirmation from a superior, shall be held to imply such confirmation, without the necessity of any charter or other writ being granted. It is not disputed that the pursuer stands in the position described in the statute; seeing that the defender could not have passed him over in completing his title under the law as it previously stood. The defender therefore is an entered vassal, as much so as if a charter of confirmation had been granted at the date of recording the disposition. Neither the pursuer nor the defender have any option in the matter, and nothing either of them can do can alter the constitution of this feudal relation.

I hardly understood that this was disputed by the defender, and if it were, I have not been able to appreciate the counter proposition maintained by him. It cannot be questioned that if the defender had obtained a charter of confirmation, he would have been the vassal of the pursuer, liable in all the obligations and entitled to all the privileges of that character, from the period at which his right took effect. The fee was not at any time in non-entry, because the superior always had a vassal in the lands, and the superior had all the rights against the defender, as vassal, which a charter of confirmation would have given him,

excepting in so far as these are specially provided for in the statute.

The remainder of the sub-section relates to matters which are not material to the present question. But there were two results which might have been contended for had the section not been qualified. On one hand, it might have been maintained, that as the entry by this implied confirmation required no act of the superior, his right to casualties necessarily fell. On the other hand, it might have been maintained by the superior that he was entitled to his casualty at the date when the confirmation was assumed to have been granted. These two matters are dealt with in the 3d sub-section, in which it is provided in substance—1st, that the superior, should retain all rights to casualties which he formerly had; and 2d, that he shall not claim them sooner than he could have done under the former law. But it is not, I imagine, a logical deduction from these provisions, that a vassal whom the statute says is entered with the superior, shall be held in this matter of composition not to be entered because before the statute passed he would not have been held to be so. The meaning of the provision, is that the superior shall have the same right against his vassal on his entering by virtue of the statute, as he would have had if he had granted a charter of confirmation; and the defender being entered as a singular successor must pay as such. No doubt it is said that the superior's right to his casualties is not to be affected by the statute, and it has been urged with great force that no greater change could be made on the superior's right than to give him a right to a composition as from a singular successor, when by the former law he would or might have been compelled to accept the heir of the last entered vassal, and could only have recovered the duties payable by an heir. But there seems to be a fallacy in this view. The defender is a singular successor entered with the superior, and the superior must have all the rights which in this respect he would have had against a singular successor, entering or proposing to enter by obtaining a charter of confirmation. He cannot, however, enforce his right until the period at which the fee would have been vacant under the former law, had the statute not passed. The opposite view would lead to very anomalous results; for the defender maintains that he is entitled to all the rights of a singular successor already entered with the superior without paying any composition, while the superior's claim is said to lie against one who might be a third party, and who is not and never can be the superior's vassal. This would hardly be to leave the law as it stood.

The 4th section simply abolishes the declarator of non-entry, and substitutes such an action as the present to enable the superior to recover his casualties.

Such are the provisions of this section of the statute. I am by no means insensible to the many perplexing questions which may arise from holding a sasine on an indefinite precept to be equivalent to a charter of confirmation. How far a disponee so infeft, who succeeds his author by a title of inheritance, can make his right as heir available to any extent, I forbear to inquire. It would certainly seem that a person in the position of the defender could not consolidate the property-title with the mid-superiority which is extinguished, and questions might be raised to appreciate the effect which might be attributed on this head to the 6th clause of the Conveyancing Act, which provides for *ipso facto* consolidation of such rights. But I am of opinion that in this matter of the superior's claim to composition the defender is a singular successor, that he was entered as such at the date of the statute, and that he became liable to pay composition as such at the death of the last entered vassal.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuers—Dean of Faculty (Horn) —J. C. Smith. Agent—T. H. Ferrier, W.S.

Counsel for Defender—Fraser—Balfour. Agents —Macritchie, Bayley, & Henderson, W.S.

Friday, May 25.

FIRST DIVISION.

MILLER AND BROWN *v.* THE PAROCHIAL BOARD OF GREENOCK.

Process—Appeal from Sheriff-Court—Competency—Court of Session Act 1868, *sec.* 53.

In a petition to the Sheriff-Court for implement of certain conditions in a building contract, the Sheriff pronounced an interlocutor in which the whole conclusions were disposed of excepting one for interdict against the defenders being allowed to proceed further with the work, and the question of expenses. The Court (reference being made to the case of the *Duke of Roxburgh* v. *Marquis of Lothian*, May 26, 1875, 12 S. L. R. 472) dismissed an appeal against the said interlocutor as incompetent under the 53d section of the Court of Session Act 1868, (31 and 32 Vict. cap. 100).

Counsel for Pursuers (Respondents)—M'Laren. Agents—Duncan & Black, W.S.

Counsel for Defenders (Appellants)—Trayner. Agent—William Archibald, S.S.C.

OUTER HOUSE.

[Lord Adam, Ordinary on the Bills.

BOYD *v.* THE COMMISSIONERS OF SUPPLY OF LANARK.

Public Officer—Commissioner of Supply—Qualification of Factor under Stat. 17 *and* 18 *Vic. cap.* 91, *secs.* 19 *and* 42.

A factor for trustees infeft in lands and heritages of the requisite amount of rent or value may be enrolled as a Commissioner of Supply under sections 19 and 42 of the Statute 17 and 18 Vic. cap. 91.

This was an appeal presented to the Lord Ordinary on the Bills under the provisions of 19 and