the occasional assistance of another partner Mr Muir, taken what may be called, with all due regard to the important services of Mr Cameron (including the arrangements made by him in America by which a very favourable realisation of certain important securities was obtained), the leading part in the liquidation work performed in Glasgow, where most of the trading firms who were the largest debtors of the bank had carried on business. Mr Jamieson, again, with the frequent assistance of his partner Mr More, took the more immediate charge of important negotiations with the other banks to assist in the general working of the liquidation, to conclude the arrangement made with the Caledonian Bank, and to enable the liquidators to arrange for payment to the large creditors, chiefly in England, of the principal sums due to them, by which claims of interest amounting to about £250,000 were given up. He also conducted in London the negotiations for settlement with the trustees of the bankrupt firms of James Morton & Company; Smith, Fleming, & Company; William Nicol & Company; Glen, Walker, & Company; and others—debtors to the amount of upwards of £5,000,000—the successful conclusion of which has saved properties and securities of very great value to the bank; and otherwise, like Mr Anderson, he took what may justly be described as a leading part in the liquidation. We do not doubt that Mr Cameron and Mr Haldane, although themselves constantly engaged in the general work of winding-up the business of the bank connected with the respective offices in Glasgow and in Edinburgh, and in arranging for surrenders and settlements with contributories, and otherwise, would themselves acknowledge that the more important and difficult matters were, generally speaking, under the more immediate management of Mr Anderson and Mr Jamieson, and, at all events, we are satisfied that this was the case. In these circumstances we are of opinion that while these last-mentioned gentlemen should be placed on the same footing, they should both have a larger part of the remuneration than their fellow liquidators. Accordingly we are of opinion, and now determine, that of the total amount of £35,400 the sum of £10,500 shall be paid to Mr Anderson, and the same sum to Mr Jamieson, and that the balance of £14,400 shall be divided equally between Mr Haldane and Mr Cameron, thus giving to each of them £7200. This division or apportionment gives to Mr Anderson and Mr Jamieson practically and in round numbers three-fifths of the gross amount to be divided equally between them, and one-fifth to each of Mr Cameron and Mr Haldane.

We think it right to add that the present decision leaves entirely open all questions in regard to the rate of remuneration to be allowed in respect of actings and intromissions later than those included in the account on which we have proceeded, and that this judgment is intended to apply to the personal services only of the liquidators, including the services of any partners who have aided them in their work. A sum of £668 has been paid to clerks of Messrs Jamieson & Haldane, and the salaries of a number of clerks and officials of the bank who were continued in the service of the liquidators at the head office in Glasgow have been regularly paid. If there be any sums due to the clerks of Mr Anderson's firm for similar work done by them, it is not meant to affect the claim for remuneration to this extent, nor to affect the claims of Mr Anderson's partner Mr Muir for the special business mentioned at the close of Mr Anderson's statement of 22d May last, excepting the claim for assistance in preparing the first balance-sheet of the liquidators as at 31st December 1878, all charges for which are included in the remuneration now allowed to Mr Anderson.

The interlocutor of Court will fix the remuneration of the liquidators for the period in question at the sum of £35,400, to be distributed amongst them in the proportions above stated, and will authorise the liquidators to take credit for that sum in their accounts; and the expenses of the parties on this question of remuneration, including the fees and outlays due to the Accountant in Bankruptcy and the Auditor of Court in respect of their inquiries and information given to the Court will be allowed as charges in the liquidation.

LORD PRESIDENT—The interlocutor will be pronounced in terms of the judgment now delivered; and it is only necessary to add that for the work done by the two officials, the Accountant in Bankruptcy and the Auditor, we propose to allow them thirty guineas each for their trouble, besides outlay, and the liquidators will be authorised to pay these sums out of the funds in their hands. The expenses of the whole parties are to be paid out of the estate in liquidation.

Counsel for Messrs Jamieson and Haldane—Pearson. Agents — Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Mr Cameron—Guthrie. Agents—J. & J. Ross, W.S.

Counsel for Mr Anderson—Mackintosh. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Shareholders—Dean of Faculty (Fraser, Q.C.)—Moncreiff. Agent—James W. Moncrieff, W.S.

Tuesday, July 20.

FIRST DIVISION.

[Lord Adam, Ordinary.

DUKE OF ATHOLE *v.* THE LORD ADVOCATE AND ANOTHER.

Process—Proving the Tenor—Teinds.

In an old sub-valuation in the teind-office one word or figure representing the valuation in bolls of the teinds of certain lands was obliterated by a tear in the paper. An action to prove the tenor of the last figure was raised by the owner of the lands, who brought as adminicles certain documents produced in a former process of augmentation in the parish, which showed that the lost figure was 10. The Teind-Clerk having reported on a remit, the pursuer asked decree on that report without further proof, and the Court *decerned* accordingly.

The Duke of Athole brought a summons against the Lord Advocate and the minister of the parish of Caputh to have it found and declared "That the report of the Sub-commissioners appointed for valuing the stock and teind of the lands within the presbytery of Dunkeld, dated on or about the 29th day of July 1635, in so far as concerns the valuation of the rent, stock, and teind of the lands of Drumbowie, in the said parish of Caputh, then pertaining to Thomas Wallandie of Drumbowie, and now to the pursuer, was of the following tenor:—'Finds ye lands of Drubowi perteing to Thomas Wallandie of Drumbowi, to be worth of rent, stok, and teind zeirlie (by the comoditie of the myln yrroff), of victual tua pairt meill and thrid pairt beir, x bolls allegit haldin *decimis inclusis:*' As also that the decree to be pronounced in the process to follow hereon shall be as valid and effectual a document of the valuation of the rent, stock, and teind of the foresaid lands of Drumbowie in all cases and causes whatsoever, improbation as well as others, as the said sub-valuation if entire would be." It appeared that in the said sub-valuation, which was extant in the teind-office, a tear of the paper ran through and obliterated the figure immediately preceding the word "bolls" in the passage above quoted. The adminicles relied on by the pursuer for proving the tenor of the lost figure were entries in various documents forming numbers of process in an augmentation and locality of the parish of Caputh raised in 1792, which contained the figure 10 as the number of bolls of the lands of Drumbowie. The Court having remitted to the Clerk of Teinds to examine the adminicles founded on, and to report, the Clerk reported, that "With respect to the valuation of the lands of Drumbowie, belonging to the pursuer, it appears to the reporter that the figure used before the word bolls was [a mark], representing ten. It can still be seen, although partially obscured, partly by the writing having become indistinct, and partly from a tear running through the figure. The other words relating to Drumbowie set forth in the summons are all quite distinct."

The pursuer then moved the Court for decree in terms of the conclusions of the summons, upon the above report, without remitting the case to further proof. He cited the following authorities—*Fogo* v. *Colquhoun*, Dec. 6, 1867, 6 Macph. 105; *Lord Lynedoch* v. *Liston*, June 24, 1841, 3 D. 1078; *Dow* v. *Dow*, June 30, 1848, 10 D. 1465; *Cunningham* v. *Mouat's Trustees*, July 17, 1851, 13 D. 1376; *Ronald*, July 3, 1830, 8 S. 1008.

At advising—

Lord President—A proving the tenor is so peculiar and yet so important a form of process that we must walk warily when we meet with an out-of-the-way case, and there is undoubtedly some peculiarity here, because the destruction of a writing (if it may be so called) in this case is the destruction of one word or letter, and in a public record. I had some difficulty at first in seeing how a process of proving the tenor could be made to avail in restoring a word or a letter. But I am now quite satisfied on the authorities that the difficulty has been got the better of. The conclusion of the summons is to set up only the portion of the record which relates to the lands of Drumbowie, which belong to the pursuer, and it is the valuation of those lands which is the material part of the record to the pursuer, and it is the word or figure representing this valuation which is said to be obliterated on the record. The effect of our decerning would be to enable the pursuer to set up only this small part of the record in which he is interested without substituting for the entire record a decree of proving the tenor.

As to the evidence which is before us in this process, it consists of nothing but the adminicles (which are satisfactory enough), and a report of the Teind-Clerk, and if it were necessary to go through the form of having a proof, that might be done, but it would be a mere form, and I think we have good authority for holding the report of the Teind-Clerk as equivalent to a proof in the case of *Lord Lynedoch*. My difficulty is thus removed, and I think we may grant decree as craved.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court decerned in terms of the conclusions of the summons.

Counsel for Pursuer — Keir. Agents — Tods, Murray, & Jamieson, W.S.

HOUSE OF LORDS.

Thursday, June 10.

(Before Lord Chancellor Selborne, Lord Hatherley, Lord Blackburn, and Lord Watson.)

BROWNLIE *v.* MILLER AND OTHERS.

(*Ante*, July 16, 1878, vol. xv. p. 718, 5 R. 1076.)

Sale of Heritage—Warrandice.

Held that a clause of warrandice in the usual terms did not give a purchaser who had bought an estate on the understanding that it was held of the Crown, and was therefore not open to a claim of composition upon entry, recourse against the sellers for the amount of the composition paid by him to a mid-superior of whom the lands turned out to be held.

Fraud—Misrepresentation—Concealment.

Held that in the circumstances above stated, the titles of the estate having been produced, and the agent for the sellers not being bound to make any mention that a claim for composition, believed by him to be unfounded, had been made, there was no ground for an action to recover the amount of the composition paid in respect of fraud or concealment.

This was an appeal from a judgment of the Court of Session of date July 16, 1878, reported *ante*, vol. xv., p. 718, 5 R. 1076. The appellant (Brownlie) contended (1) that there was legal fraud or concealment on the part of sellers' agent; and (2) that they were entitled under the clause of warrandice to recover the amount of the composition they had been obliged to pay.