the claimants were entitled, nor any finding as to expenses. *Held* that it was incompetent, under section 53 of the Court of Session Act 1868, to reclaim against this interlocutor without leave from the Lord Ordinary.

Act. M'Laren—*Alt.* Pattison.

Friday, May 16.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

DUKE OF ARGYLL *v.* DALGLEISH'S TRUSTEES.

Mid-Superiority—Disposition — Confirmation—Mid-Impediment.

The mid-superior of certain lands conveyed in 1808 the mid-superiority to the proprietor of the *dominium utile*, by a disposition containing only an *a me* manner of holding. Upon this the proprietor was infeft in 1811. In 1834 the mid-superior granted to the proprietor a further disposition of the mid-superiority, bearing expressly to be in supplement of the former disposition, and containing warrant for infeftment either *a me vel de me*. Upon this deed also the proprietor was infeft in 1834. In 1849 the over-superior granted a deed of confirmation, both of the disposition of 1808 and the sasine of 1811 following thereon, and of the disposition of 1834 and the sasine of the same year following thereon. *Held* that the confirmation of the infeftment of 1811 did not create a separate estate of mid-superiority, thereby operating as a mid-impediment to the public confirmation by the over-superior of the disposition and sasine of 1834, but that the disposition of 1808 and that of 1834 were to be read together as forming one conveyance of the mid-superiority, with a double manner of holding, and were both confirmed by the deed of 1849.

Charter of Confirmation—Validity — Error in description of Instrument of Sasine.

In a charter of confirmation an instrument of sasine to be confirmed was described as recorded on the 18th December, whereas the correct date of recording was the 18th September. The charter, after giving the erroneous date, contained the words, "or of whatever other date or tenor" the same may be. *Held* that this error did not invalidate the confirmation of the said instrument of sasine.

Instrument of Resignation ad remanentiam—*Procurator—Designation, Omission of.*

In an instrument of resignation *ad remanentiam*, the person who acted as procurator, though named, was not designed. *Opinions* that the omission was not fatal to the instrument.

This was an action of reduction, improbation, and declarator of non-entry, brought by the Duke of Argyll against the trustees of the late James Dalgleish of Westgrange and Ardnamurchan. The following are the circumstances which gave rise to the action:—By feu-disposition, dated 21st September 1696, Archibald Duke of Argyll conveyed the lands and barony of Ardnamurchan to Alexander Campbell of Lochnell in liferent, and to Duncan Campbell, his eldest son, in fee, for payment of 500 merks yearly of feu-duty, and for certain services of hosting, hunting, and warding. Infeftment was taken by these persons on this deed.

By contract of sub-feu, dated 12th October 1722, the said Duncan Campbell sub-feued the said lands and barony to Alexander Murray for payment of 6000 merks of feu-duty, and also for payment to the Duke of Argyll, the over-superior, of the foresaid sum of 500 merks, and for relief of all services due by him to the Duke as over-superior. Infeftment was taken by Alexander Murray, and the *dominium utile* of the said lands and barony, after passing through several hands, descended to the now deceased Sir James Milles Riddell as heir of entail, who completed his title thereto by precept of *clare constat* from General Duncan Campbell as undivested mid-superior, dated 21st January and 14th July 1834, and instrument of sasine thereon, dated 21st July, and recorded 8th September 1834.

By disposition, dated 19th August 1808, General Duncan Campbell sold and disponed to Sir James Milles Riddell the foresaid estate of mid-superiority, to be holden of and under the Duke of Argyll, his heirs and successors, in feu-farm, for payment of the foresaid feu-duty of 500 merks, and also of the sum of £27, 18s. Scots money in lieu and place of the foresaid services of hosting, hunting, and warding. Sir James was infeft on this disposition, conform to instrument of sasine dated 5th and 6th June, and recorded 15th July 1811.

Sir James also afterwards obtained a supplementary disposition from General Duncan Campbell of the said estate of mid-superiority, dated 13th February 1834. This deed proceeds upon the narrative of the foresaid sale and disposition of 19th August 1808, and of that disposition containing only an obligation to infeft Sir James by a single manner of holding *a se*, and upon the further narrative that Sir James had requested that he should grant in Sir James' favour a supplementary disposition of the said lands containing a warrant for infefting him therein, either *a se vel de se*. On this narrative General Campbell, without prejudice to the said disposition of 1808 formerly granted by him, but in supplement thereof, sold and disponed to Sir James the said estate of mid-superiority. The said disposition contains an obligation to infeft *a se vel de se* with procuratory of resignation, and precept of sasine. Sir James was infeft upon this deed, conform to instrument of sasine, dated 21st July, and recorded 18th September 1834.

By charter of confirmation, dated 5th July 1849, the pursuer confirmed to and in favour of Sir James Milles Riddell, his heirs and assignees, the said lands and barony, the disposition of the mid-superiority, dated in 1808, and the sasine in 1811 thereon, the supplementary disposition of 1834, and the sasine thereon, which last-mentioned sasine is described in the charter as 'dated the 21st day of July, and recorded in the General Register of Sasines at Edinburgh the 18th day of December 1834, or of whatever other dates or tenor the said writs may be,' while the correct date of recording was 18th September 1834. This charter of confirmation bears that the said lands and barony are to be holden by Sir James and his foresaids immediately of and under the pursuer, his heirs and successors, in feu-farm fee and heritage for ever, giving therefor yearly to the pursuer and his foresaids the sum of 500 merks, and also paying to them

the sum of £27, 18s. Scots money in lieu and place of the services of hosting, hunting, and warding.

The *dominium utile* of the said lands and barony, which was entailed, was disentailed by Sir James Milles Riddell by instrument of disentail, dated 12th July, and recorded in the Register of Tailzies on 10th September 1851. He thereafter, being thus in right of the property and mid-superiority, conveyed by trust-deed the said lands and barony, both property and superiority, to Mr Barstow, who was infeft as trustee, conform to instrument of sasine recorded on 10th September 1851.

On 8th December 1851 Sir James, as superior of the said lands and barony, and as proprietor of the same, holding of himself, on the narrative of his infeftment in the *dominium utile* thereof, and upon the further narrative that by the disposition granted by General Campbell in 1834, and his infeftment in 1834 following thereon, the said lands are now held by him of himself, as superior thereof, and that it was proper that his right of property in the lands should be consolidated with the right of superiority of the same in his person, granted a procuratory of resignation *ad remanentiam* for consolidating the same, together with all right, title, and interest which he had or could pretend to the same. An instrument of resignation *ad remanentiam* was expede thereon on 12th December, which was recorded on 22d December 1851. The defender objected to this instrument, that the person who acted as procurator was, although named, not designed.

On 16th and 19th December 1851, Sir James, with consent of Mr Barstow as trustee, executed a deed of entail by which, on the narrative that when he succeeded to the estate previously entailed the same was burdened with a feu-duty of £300 sterling or thereabouts, and that he purchased the superiority, which thus became vested in him in fee-simple, whereby the estate was relieved of the said feu-duty, he conveyed to himself and the heirs of tailzie therein mentioned the said lands and barony, 'both property and mid-superiority thereof, now consolidated in the person of me, the said Sir James Milles Riddell.' Infeftment in favour of Sir James followed upon this deed.

Thereafter a portion of the said estate was sold for payment of debts, under the authority of the Court, and was purchased by the late Mr James Dalgleish, whose trustees are the defenders in the present action. The disposition in favour of Mr Dalgleish contains obligation to infeft, to be holden *a me vel de me* clause of resignation and precept of sasine, and binds Mr Dalgleish to free and relieve Sir James Milles Riddell of all cess, feu, blench, and teind duties, minister's stipend, and other burdens payable after Whitsunday 1856, the term of his entry, it being thereby 'declared that of the feu and other duties payable to the Duke of Argyll' for the said whole lands and barony, there shall be payable by Mr Dalgleish, for the lands disponed to him, 'the sum of £16, 14s. sterling, or as many merks Scots money as shall correspond to that sum of feu-duty, to the Duke of Argyll,' Sir James being bound to free and relieve Mr Dalgleish of the remainder of the said feu-duty, 'payable for, and out of, the said whole lands and barony of Ardnamurchan.' On this disposition Mr Dalgleish was infeft, conform to instrument of sasine recorded 12th June 1856.

After the death of Mr Dalgleish, his trustees neglected to enter themselves vassals with the Duke of Argyll, who accordingly raised this action against them. The trustees defended the action on the ground that the pursuer was not their immediate lawful superior, but that the mid-superior under whom they held was Sir Thomas Milles Riddell, son of Sir James Milles Riddell, the last-entered vassal. The following was their contention in support of this position:—In the first place, they maintained that the charter of confirmation of 1849 did not confirm the instrument of sasine which was taken on the supplementary disposition of 1834 in favour of Sir James Milles Riddell, because the instrument of sasine was therein described as recorded on 18th December, whereas the correct date of recording was 18th September. In the second place, they argued that the charter of confirmation of 1849 had the effect of confirming and rendering public Sir James Milles Riddell's hitherto unconfirmed *a me* infeftment of 1811, of completely investing him with the mid-superiority as it stood in the person of the General at the date of the confirmation, and of completely divesting the General thereof. But in consequence of the base infeftment in favour of Sir James proceeding on the General's supplementary disposition of 1834, the only estate remaining in the General at the date of the confirmation, and which admitted of being vested in Sir James by the confirmation of his infeftment of 1811, was the barren estate of mid-superiority held immediately of the Duke of Argyll for payment of the original feu-duty of 500 merks and other prestations. The attempted confirmation of the disposition and infeftment of 1834 had not the effect of making that infeftment of Sir James Milles Riddell a public infeftment holden directly of the Duke. It operated simply as a confirmation by the Duke of the sub-feu created by said disposition and infeftment, and held immediately of Sir James as mid-superior of the barren estate of superiority above mentioned, in virtue of the confirmation of his prior infeftment of 1811, which operated as a mid-impediment to the public confirmation by the Duke of the said disposition and infeftment of 1834. In the third place, they contended that the instrument of resignation *ad remanentiam* executed by Sir James Milles Riddell for the purpose of consolidating the estates of mid-superiority and property in his person, was ineffectual for that purpose, as the person who acted as procurator, viz., "Hypolite William Cornillon," was named but not designated.

The first two pleas in law for the defenders were—"(1) The pursuer not being the immediate lawful superior of the defenders, he has no title to sue the present action, and the defenders should therefore be assoilzied from the whole conclusions thereof, with expenses. (2) The action cannot proceed, and ought to be dismissed, with expenses, in respect that the true vassal of the superior is Sir Thomas Milles Riddell, the heir of the last vassal entered, and that he has not been called as a party to the action."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh 11th January* 1873.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record, process and productions, repels the first and second pleas in law for the defenders; Finds that the lands and subjects specified and described in the conclusions of the summons are in non-entry as libelled; and appoints

the cause to be put to the roll in order to the application of this finding."

In a note subjoined to this interlocutor the Lord Ordinary, after narrating the state of the title, remarks:—"Such being the state of the title, the defenders, Mr Dalgleish's trustees, maintain that the charter of confirmation of 1849 did not confirm the instrument of sasine which was taken on the supplementary disposition of 1834 in favour of Sir James Milles Riddell, because that instrument of sasine is therein described as recorded on 18th December, whereas the correct date of recording is 18th September 1834. The Lord Ordinary is of opinion that this objection is not well-founded, because the date of the sasine as following on that disposition is correctly given, which is sufficient for its identification. The charter also, after giving the erroneous date of recording, contains the words, 'or of whatever other dates or tenor' the same may be (*Adam* v. *Drummond*, June 12, 1810, F.C.)

"The defenders maintained that as the charter of confirmation is in the form set forth in schedule D annexed to the Transference of Lands Acts 1847 (10 and 11 Vict. c. 48), and as that schedule only specifies the instrument of sasine as recorded, it is essential that the date of recording should be correctly set forth in the charter. The Lord Ordinary considers this objection untenable. The reason why the date of recording only is mentioned in schedule D is, that in the form of an instrument of sasine, given in the Infeftment Acts of 1845 (8 and 9 Vict. c. 35), there is no date, and that by the said statute it is provided, sec. 3, that after 1st October 1845 the instrument may be recorded at any time during the life of the party in whose favour it has been expede, and that the date thereof shall be taken to be the date of presentment and entry marked thereon by the keeper of the record. The adoption of the form given in the Transference of Lands Acts of 1847 does not prevent the identification in such a charter of an instrument of sasine expede prior to 1st October 1845, by the date thereof. Schedule D. annexed to the Act of 1847 provides for this by containing the directory words in italics, 'or of whatever other date or tenor the said instrument of sasine may be.'

"It was also argued by the defenders that the charter of confirmation did not make the infeftment of 1834 on the supplementary disposition of that year a public infeftment holding directly of the Duke of Argyll, because Sir James' infeftment of 1811, which was confirmed at the same time by the charter of confirmation, operated as a mid-impediment to the public confirmation by the Duke of that disposition and sasine of 1834, so that Sir James held base of himself as mid-superior, in virtue of his confirmed infeftment of 1811, a substantial estate of mid-superiority under the supplementary disposition and infeftment of 1834. The Lord Ordinary is of opinion that this was not the effect of the charter of confirmation of 1849. The disposition of 1834 is in all respects supplementary to that of 1808, and is another disposition of the same subjects and interest, granted, as it expressly bears, in supplement thereof, with an alternative manner of holding. The charter of 1849 confirmed both rights at the same time, and made, the Lord Ordinary thinks, both public, and it expressly bears that the lands and barony are to be held by Sir James of the Duke of Argyll in feu, for payment of 500 merks of feu-duty, and of £27, 18s. in lieu of the services of hosting, hunting, and warding. Sir James thus, according to the view which the Lord Ordinary takes, held by virtue of confirmation of the disposition of 1808 the supplementary disposition of 1834, and the sasines following thereon, the mid-superiority of the Duke in feu, and by the resignation *ad remanentiam* of 1851 (which Sir James expede for the express purpose of consolidating the *dominium utile* of the lands and barony with the said mid-superiority) he consolidated the same. He thereafter divested himself of the portion thereof sold to Mr Dalgleish by disposition, containing procuratory and precept. He had no intention of keeping up any mid-superiority, and he accordingly granted to Mr Dalgleish a disposition of the lands with his whole right and interest therein, by virtue of which Mr Dalgleish could at once enter with the Duke of Argyll as superior, and by which Mr Dalgleish is, as vassal, taken bound to pay to the Duke as his immediate superior in the subjects bought by him a certain proportion of the original feu-duty. No mention is made in that disposition of the sub-feu-duty of 6000 merks, which was considered by all concerned as extinguished by the purchase of the mid-superiority by Sir James and by the consolidation above mentioned.

"It is unnecessary, therefore, the Lord Ordinary thinks, to call as a party to the action the heir of Sir James Milles Riddell, the last-entered vassal (*Scott* v. *Falconer*, 18th July 1863, 1 Macph. 1164, and cases there cited).

"It is further objected by the defenders that the instrument of resignation *ad remanentiam* is inept, and that no effectual consolidation of the property and superiority took place, because the person who acted as procurator 'Hypolite William Cornillon,' though named, is not designed. The Lord Ordinary considers this objection to be too critical. Any person can act as procurator, and it is, he conceives, sufficient if it is clearly shown on the face of the instrument that there appeared before the notary a procurator to give resignation, different from the superior's commissioner or agent and the witnesses, and so distinctly named as to distinguish him from others (*Morton* v. *Hunters & Company*, 26th November 1830, 4 W. and S., 379). But even if such want of designation were held fatal to the instrument, that would not in the opinion of the Lord Ordinary avail the defenders, because they are in right of a disposition of the lands, both property and superiority, and if there is any defect in the instrument of resignation that cannot affect the right of the pursuer as superior, to call upon them, the trustees of the true proprietor of the subjects to whom the whole right therein has been made over, to enter as his vassals, seeing that the lands are in non-entry."

The defenders reclaimed.

It was argued for them that the mid-superiority still remained with the heirs of Sir James Milles Riddell, on account (1) of the error as to the date of recording of the instrument of sasine in the charter of confirmation of 1849; (2) of Sir James Riddell's infeftment of 1811 creating a mid-impediment which prevented the charter of confirmation making the infeftment of 1834 on the supplementary disposition of that year a public infeftment; and (3) on account of the attempted consolidation of 1851 being inept, the procurator not being designed.

It was also argued, that, in any view, the state of the title was so doubtful that the heir of the last entered vassal should be called for his interest,

Magistrates of Hamilton v. *Hart's Trs.*, Feb. 2, 1854, 16 D. 437; *Adam* v. *Drummond*, June 12, 1810, F.C.; *Campbell*, May 12, 1822, 1 S. 394.

The pursuer was only called upon to speak to the point as to the necessity of designing the procurator in the instrument of resignation.

It was argued for him that it was not indispensable that the procurator should be designed, if it was clearly shown that some one appeared for each party.

At advising—

LORD PRESIDENT—It cannot be maintained that these lands are not in non-entry. The defences relied on are—(1) that the pursuer is not the immediate lawful superior of the defender, and has consequently no title to sue; and (2) that he cannot sue without calling the heir of the last vassal entered. In the first place, we must examine the title. The estate was first created in 1696, when the Duke of Argyle conveyed it to Campbell of Loch Nell for payment of 400 merks feu-duty, and Campbell of Loch Nell granted a sub-feu of the same lands in 1722 to Alexander Murray. As regards this sub-feu, which formed the *dominium utile* of the lands, it came into the person of Sir James Milles Riddell in 1834. At a date anterior to this he had acquired a mid-superiority by a deed dated August 19, 1808, and he thus had both the *dominium utile* and mid-superiority in his own person, but the peculiarity of his title was that the disposition of 1808 contained only one manner of holding, and it being necessary that Sir J. M. Riddell should acquire entry with his immediate superior, he therefore got another disposition of mid-superiority from General Campbell of Loch Nell, dated 1834. Now, this disposition was of the nature of a supplementary disposition. There is no doubt that Campbell of Loch Nell was divested of his mid-superiority by the deed of 1808. He had no longer any estate to convey, and so the only effect of the deed of 1834 was to fortify the deed of 1808. He had already given all he had to give, and so the disposition of 1834 only gave to the disponee a double manner of holding. Infeftment was taken, and both the disposition of 1808, with the seisin following thereon in 1811, and the disposition of 1834, with its seisin of the same year, were confirmed by the Duke of Argyle in 1849. Now, it is maintained by the defenders that the effect of this was to convey two estates of superiority, one holding of the Duke and conveyed by the deed of 1808, and another, which it is said came into being by the deed of 1834, and which other estate of superiority was held in virtue of that infeftment by Sir J. M. Riddell as his own vassal. Now this seems to me a subtle imagination only. The true view seems to me to be that the two simply give the disponee a good title to the mid-superiority with a double manner of holding, and that the conveyance of 1834 merely supplies the defects of that of 1808.

Now, the next step in the progress of titles is, that Sir J. Riddell, having this good title to the *dominium utile* and the mid-superiority, was his own vassal, and he very properly proceeded in 1851 to consolidate his titles in the ordinary form—by a procuratory of resignation *ob remanentiam*, dated 12th December 1851. Sir James was thus vested with a consolidated estate, holding of the Duke of Argyll, and having the *plenum dominium*. A portion of the estate was conveyed to the late Mr Dalgleish (by Sir James) by disposition, of date 30th May 1856, and that disposition contained a procuratory of resignation and precept of sasine, or at least clauses which now take the place of these old forms; and Mr Dalgleish was infeft on this disposition, conform to instrument of sasine recorded 12th June 1856.

Now, Sir James Milles Riddell, being the vassal last entered, died in 1861, and the superior now requires Dalgleish's trustees to take entry. The first defence against this demand is that the Duke of Argyle is not the immediate superior of the defenders. This defence rests upon the peculiar view of the double conveyance of the mid-superiority to which I have already alluded; and as I think that that argument is groundless, the very foundation of this defence is cut away. There is no doubt that the Duke is the immediate lawful superior of the defenders in these lands.

Then there are certain other objections which seem to be intended to support the objection that the superior can't sue this action without calling the heir of the vassal last entered. In the charter of confirmation of 1849 there is a mistake in the description of one of the sasines confirmed. It is described in the charter as recorded on 18th December, whereas it is in reality recorded on 18th September, and it is thought that this creates difficulties in the way of the defender's titles, and that the heir of the last entered vassal must be called. Now, it appears to me that this objection is unfounded. The mistake is one of little consequence, for the date of the sasine itself is correctly given, and the words which follow the description, viz.—"or whatever other date," are intended to, and do, cover any such mistake.

Further, it is said that the consolidation in favour of Sir James Milles Riddell was defective on account of an omission in the procuratory of resignation. The procurator of the vassal resigning is named in the instrument, but there is no designation, and it is argued that that is fatal. I cannot countenance this contention. There is no statute requiring that the procurator should be designed; and what it is necessary to make clear in an instrument of resignation is that one person makes the resignation and another receives it.

But, apart from this, it is a sufficient answer to the defender's objection to say that it does not lie with the defender to take the objection. He cannot found on a technical objection to his own title, and the instrument of sasine is part of the title under which he holds his estate.

I have no hesitation in adhering to the interlocutor of the Lord Ordinary, in which he finds that the lands are in non-entry.

LORD DEAS—As to the objection which is taken to the instrument of resignation of 1851, viz., that the procurator is only named and is not designed;—if that point had been raised in a question between singular successors and the parties holding the lands, I think that it would have required very serious consideration. Although there is no statutory provision requiring that the procurator shall be designed, it is the invariable practice that he should be so, and it is the only means to secure clear identification. And if it had been necessary to consider that question, I should have had great difficulty in holding that the omission was not fatal. It, however, is not necessary to decide the question here, for I agree with your Lordship that

the defenders have no right to take objections to their own titles. On all other points I agree with your Lordship.

LORD ARDMILLAN—I entirely agree with your Lordships that the interlocutor of the Lord Ordinary should be adhered to; and I would only remark, that after the decision in the case of *Morton* v. *Hunters & Co.*, 26th November 1830, 4 W. and S., 379., I think the objection founded on the omission of the procurator's designation would be untenable.

LORD JERVISWOODE concurred.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuer—Solicitor-General and Mackay. Agent—Alexander Howe, W.S.

Counsel for Defenders—Marshall and Keir. Agents—Dalgleish & Bell. W.S.

Saturday, May 17.

SECOND DIVISION.

CAMPBELL *v.* BREADALBANE AND OTHERS.

Proving the Tenor—Teinds—Casus Amissionis.

Where a valuation by Sub-Commissioners, made in 1629, was alleged to be partially destroyed by exposure and tear and wear, but an old copy of said valuation existed, and approbations at the instance of several heritors,—Tenor found proved, and adminicles sustained.

The summons, in this action, at the instance of the Duke of Argyll, heritable proprietor of certain lands in the parish of Kilninver, now united to Kilmelford, in the county of Argyll, against the Earl of Breadalbane, patron of the parish of Kilninver, concluded that "it ought and should be found and declared, by decree of the Lords of our Council and Session, Commissioners appointed for Plantation of Kirks and Valuation of Teinds, that a report or valuation by the Sub-Commissioners appointed for valuing the stock and teind of the lands within the Presbytery of Argyll, dated the day of 1629, is, in so far as regards the pursuer's said lands of Schellachane, Darilea, Lagganargit, and Letternamuick, in the parish of Kilninver, now united to Kilmelford, of the following tenor:—'Finds and declares be the deposition and aith of veritie of Sr Donald Campbell of Ardnamurchane, Knytt Barronett, that his lands of Schellachane, lyand within the said parochyne of Killinjwvar, payit, pays, and may pay yearly in tyme comeing of constant rent in stocke sixteen bolls meall and ffoure boilles bear; And ffinds and declares that the samen has payit and payis of personage teynd ffour bolls meall yearlie, and that the viccarage brokes and small teynds of the same has been tane up *ipsa corpora* in tyme bygane, and are worth and may pay yearly the sowme of ffoure poundis money: And that the said Sr Donald his lands of Darilea and Letternamuke hes payit, pays, are worth, and may pay of rent in stoke twenty-two stanes cheis, and the samen are littill gers rooms, hes payit, pays, nor may pay no personage teynd, and that the viccarage of the same is worth and may pay yearly the sum of 48 sh. money; And that his lands of Lagganargett payit, pays, and may pay as a constant rent in stock 25 stanes cheyis and 3 stanes butter, and that he has payit and pays yearly of parsonage teind 2 firlots meil, and that ye vicarrage of the samen is worth and may pay yearly the sum of 48 sh. foresaid:' As also it ought and should be found and declared by our said Lords Commissioners that the decree to be pronounced herein shall be in all respects as valid and sufficient a document to the pursuer of the valuation of the foresaid lands and teinds, in all cases and causes whatsoever, improbation as well as others, as the said original report or valuation would be, notwithstanding that the same has been partially destroyed, mutilated, and defaced: And in case of any of the said defenders appearing and occasioning unnecessary expense to the pursuer in the process to follow hereon, such defenders ought and should be decerned and ordained, by decree foresaid, to make payment to the pursuer of the sum of £100, or such other sum as our said Lords Commissioners shall modify as the expenses of the process to follow hereon, conform to the laws and daily practice of Scotland, used and observed in the like cases, as is alleged."

The pursuer stated that in the year 1629 the Sub-Commissioners appointed for the valuation of the stock and teind of the lands within the Presbytery of Argyll issued their report, which contained, *inter alia*, the valuation of lands in the parish of Kilninver, mentioned in the summons, and then belonging to Sir Donald Campbell of Ardnamurchane.

The said report or valuation of the said Sub-Commissioners of Teinds is in the custody of the keeper of teind records, but it has been partially destroyed, mutilated, and defaced by exposure to handling, and from the tear and wear to which it has been subjected in course of time. The paper upon which it was written is very friable, and bears traces of having been injured by damp. More particularly, that part of the document upon which the valuation of the pursuer's said lands was written is in a very tattered condition. The valuation of the pursuer's said lands was written very near the end of the report, and the document exhibits marks of having been folded or rolled up in such manner that the concluding pages must have been upon the outside, and consequently most exposed to injury. So far as can be ascertained, the said report has always been kept among the records of the High Commission, and within the memory of man it has never been in any other condition than that in which it now is.

The first process of augmentation, modification, and locality in the united parishes of Kilninver and Kilmelford was raised in 1758, and in the course of the proceedings the heritors alleged the existence of the said sub-valuation of 1629, and obtained a diligence for its recovery; but it was eventually discovered to be in the hands of the teind clerk for the time being, and the Lord Ordinary ordered the defenders to furnish the minister with a copy. Thereafter the following interlocutor was pronounced:—"*Edinburgh, 14th January* 1761.—David Dalrymple, for the pursuer, represented that at last calling an excerpt was given in for Mr Campbell of Melfort, one of the heritors, of the valuation of the Sub-Commissioners of the Presbytery of Argyll as to his particular lands; but that now the pursuer had recovered an exact double of the valuation of both the united parishes, and consented that the same be sustained as the rule of rating the teinds in this process. Robert Campbell, for the heritors, agreed thereto. The Lords sustain the valuation of the