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

20 Vic. cap. 93, sec. 6, by James Boyd, factor and commissioner for the trustees of the late Robert Steel of Browncastle and Burnhouse, against a deliverance of the Commissioners of Supply of the county of Lanark refusing to enrol him as a Commissioner on the ground of "want of statutory qualification." It was not disputed that the trustees were infeft in lands yielding the requisite amount of rent or value, nor that Boyd was their duly appointed factor.

In support of his appeal the claimant founded on section 19 of the Valuation of Lands Act (17 and 18 Vic. cap. 91), which, *inter alia*, enacted that "the factor of any proprietor or proprietors infeft, either in liferent or in fee, unburdened as aforesaid, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of eight hundred pounds, shall be qualified to act as a Commissioner of Supply in the absence of such proprietor or proprietors."

By section 42 of the above statute the word "factor" was defined to mean "a person acting under a probative factory and commission for the proprietor or proprietors, including corporations being proprietors, for whom he is factor, and in the *bona fide* actual management as such factor of the lands and heritages belonging to such proprietor."

A previous case raising the same question (not reported), viz., *Darling* v. *The Commissioners of Supply of Lanarkshire*, decided by the Lord Ordinary on the Bills (Ormidale) on January 14, 1870, was quoted for the appellant. In that case there was a claim to be enrolled either as a proprietor in the sense of the Act *qua* trustee, or alternatively as factor for the trustees. The Commissioners pleaded (1) that the claimant was not entered proprietor as required on the valuation roll; (2) that there was no qualification as proprietor *qua* trustee under the 19th and 42d sections of the Act 17 and 18 Vic. cap. 91; (3) that the claimant was only one of a body of trustees, and could not come forward in a representative character for himself and the others; (4) that if the trustees were not entitled to be enrolled neither was their factor.

In that case the Lord Ordinary, on 14th January 1870, pronounced an interlocutor finding that the appellant was entitled to be enrolled as a Commissioner of Supply, as factor, to act in the absence of the trustees, and to that extent and effect altered the deliverance appealed from. He added the following note:—

"*Note.*—It was not disputed that the trustees of the late William Darling are infeft in lands and heritages within the county of Lanark of the requisite amount of rent or value, nor was it disputed that the appellant is their factor. In this state of matters it appears to the Lord Ordinary that according to the true construction of sections 19 and 42 of the Lands Valuation (Scotland) Act, looked at together, the appellant must be held to be qualified, as the factor of Darling's trustees, to be a Commissioner of Supply to act in their absence. In any other view the mention of trustees in section 42 of the Act would be without an object or meaning.

"It also appears to the Lord Ordinary that having regard to the terms of the statute, which expressly declares that a factor in the position of Mr Darling 'is qualified to act,' not merely as the proxy of some other party, but 'as a Commissioner of Supply' in the absence of such other party, the appellant is entitled to be put on the roll of Commissioners 'as factor for the trustees of the late William Darling.' The Lord Ordinary cannot see how his being so entered on the roll of Commissioners of Supply can do any harm, while he can quite understand that it may tend to obviate much inconvenience and trouble to all concerned.

"The appellant in this case also claimed to be enrolled as one of the late William Darling's trustees, but the Lord Ordinary has not found it necessary to determine whether such a claim is good in itself or not, as he is clear that the appellant is not entitled to be entered in that capacity and also as factor for Mr Darling's trustees; and it was stated for him that he was not to be understood as maintaining that he was."

Following that authority, the Lord Ordinary in the present case, on 19th December 1876, found the appellant entitled to be enrolled "as factor for the trustees of the late Robert Steele, to act in their absence," and to this extent and effect sustained the appeal and altered the deliverance.

Counsel for Appellant—Alison. Agent—R. A. Brown, L.A.

Counsel for Respondents—J. P. B. Robertson. Agents—Morton, Neilson, & Smart, W.S.

HOUSE OF LORDS.

Friday, March 23.

UNIVERSITY OF ABERDEEN *v.* TOWN COUNCIL OF ABERDEEN.

(Before Lord Chancellor (Cairns), Lord Hatherley, Lord O'Hagan, Lord Blackburn, and Lord Gordon.)

(*Ante*, vol. xiii. p. 677.)

Trust—Breach of Trust—Misapplication of Trust Property, and Operation of Prescription as a Bar to redress.

By deeds of mortification certain sums were assigned to the Town Council of a burgh upon trust for the benefit of professorships in a University. The Town Council invested the money in land, which was conveyed to their "Master of Mortifications," a municipal functionary, and his successors in office, for behoof of the beneficiaries. Thereafter the "Master of Mortifications," instructed by the Town Council, sold the land for a yearly feu-duty. The purchaser, who was in fact an agent of the Town Council, surrendered the property to them, and they were infeft upon it. Soon afterwards the Town Council, upon a representation that they were proprietors of the ground, obtained from the Crown a grant of the salmon fishings in the sea opposite the lands purchased. By these means the Town Council largely enhanced its own property and income, but restricted the beneficiaries to the feu-duty.