sions throughout a long course of years by the unanimous consent of all parties interested, as evidencing what must presumably have been the intention of the Legislature at that remote period." And in a recent case in your Lordships' House — *Winstanly* v. *North Manchester*, A.C. 1910 — it was held that the rector of a parish was rateable, under the 43 Eliz. c. 2, in respect of the burial fees he received as occupier of the parish burial ground, notwithstanding the fact that for over three centuries the practice had been not to rate him.

It may be doubted in the present case, however, whether the persons who paid these fees knew anything whatever of the right by virtue of which they were demanded, or whether the payment could be described as having been made with the consent, to use the language of Lord Watson, of all parties interested; but however that may be, the payment of the fees for even 150 years from the year 1766, though undoubted, is, I think, irrelevant, and cannot affect the meaning of the documents your Lordships have to construe, inasmuch as their language is plain and unambiguous. So that the question for decision, in my view, narrows itself down to this — Is an honour or other title or dignity of the United Kingdom, created and conferred since 1707, a Scottish title, dignity, or honour within the meaning of the foregoing charters and patents of the Scottish King and statutes of the Scottish Parliament?

I concur with Lord Low, and, as I understand, with the other learned Judges in the Second Division, in thinking that a post Union title or dignity or honour is a wholly different thing from the Royal title, dignity, or honour conferred before the Union by the King of Scotland by virtue of his prerogative as Sovereign of that kingdom.

Where I differ from him and them is in their conclusion that the 20th section of the Treaty of Union is ambiguous in its language, and that because of that the usage of the last 150 years can be relied upon to secure to this officer fees in respect of the honours, titles, and dignities created since its date which are not Scottish honours, titles, or dignities in the sense I have indicated. In my view, the Treaty of Union left the office as it was, with the rights which, under the law of Scotland, the holder of it theretofore enjoyed in respect to the creation of Scottish honours, titles, and dignities properly so called and nothing more.

The order of knighthood is not in any sense a local title. It is an order of chivalry recognisable in every part of the King's dominions, and differs in that respect altogether from an earldom conferred by the King as Sovereign of the kingdom of Scotland. (See *Sir John Douglas's* case, 4th vol., Coke's Reports, vol. R., p. 16.)

In my opinion, therefore, the interlocutors appealed from are erroneous, and should be reversed, and this appeal be allowed with costs.

LORD KINNEAR — I agree entirely with all that has been said by my noble and learned friend opposite, and I therefore think it unnecessary to detain your Lordships by stating my own reasons, which are entirely in accordance with his.

LORD GORELL—I have had the opportunity of reading and considering the judgment of my noble and learned friend Lord Atkinson, and I fully concur with it.

Their Lordships reversed, with expenses, the judgment appealed against.

Counsel for the Pursuers (Respondents) —Clyde, K.C. — Macphail, K.C. — C. H. Brown. Agents—George J. Wood, W.S., Edinburgh—John Kennedy, W.S., Westminster.

Counsel for the Defenders (Appellants) —The Lord Advocate (Ure, K.C.)—The Solicitor-General (Sir John Simon, K.C.)—J. C. Pitman. Agents — Thomas Carmichael, S.S.C., Edinburgh—Solicitor to the Treasury, London.

COURT OF SESSION.

Friday, November 17.

FIRST DIVISION.

(SINGLE BILLS.)

A B *v.* C D.

Process—Double Reclaiming Notes—Competency—Expenses—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 52.

While a party who means to reclaim is not in safety to rely on the opposite party's intimation that he intends to present a reclaiming note, he is not entitled, after the latter's note has been not only intimated but printed and boxed, and the case sent to the roll, early in the reclaiming days to prepare another reclaiming note with a view to getting the expense thereof. Accordingly where double reclaiming notes have been presented it will be for the Auditor to say whether there was any proper reason for lodging the second note, and if there was not, he will disallow the expense of it even though the party lodging it may have been successful in the cause.

The Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 52, enacts—"*Effect of a reclaiming note against a final judgment.*—Every reclaiming note, whether presented before or after the whole cause has been decided in the Outer House, shall have the effect of submitting to the review of the Inner House the whole of the prior interlocutors of the Lord Ordinary of whatever date, not only at the instance of the party reclaiming, but also at the instance of all or any of the other parties who have appeared in the cause, to the effect of enabling the Court to do complete justice,

without hindrance from the terms of any interlocutor which may have been pronounced by the Lord Ordinary, and without the necessity of any counter reclaiming note; and after a reclaiming note has been presented, the reclaimer shall not be at liberty to withdraw it without the consent of the other parties as aforesaid; and if he shall not insist therein, any other party in the cause may do so, in the same way as if it had been presented at his own instance."

In an action of damages for slander at the instance of A B against C D the Lord Ordinary on 9th November 1911 approved of the pursuer's first issue as amended, discharged his second and third issues, and approved of the counter issue proposed by the defender. Against this interlocutor the defender reclaimed, his note being boxed on 14th November 1911.

On the following day, November 15th, the case was sent to the Summar Roll. On the same day, November 15th, the pursuer boxed a reclaiming note submitting to review the same interlocutor.

On the pursuer's reclaiming note appearing in the Single Bills on 17th November counsel for the defender objected to it as unnecessary. He stated that on 11th November the defender's agents had written to the pursuer's agents intimating their intention to reclaim and enclosing a print of the reclaiming note; that the note itself was boxed on 14th November and sent to the Summar Roll on the following day; and that in these circumstances the pursuer's reclaiming note was unnecessary and ought to be refused—Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 52.

Counsel for the pursuer stated that the relations between the parties were such that his client was not in safety to allow the reclaiming days to expire without preparing a reclaiming note.

LORD PRESIDENT—The question here raised is as to whether we should send this reclaiming note to the roll. The circumstances are these—There was a judgment, and one of the parties—the defender—intimated to the pursuer that he intended to reclaim. He carried out his intention by printing and boxing in the ordinary way, and his reclaiming note appeared in the Single Bills and was sent to the roll.

This is a reclaiming note by the pursuer, and it appeared in the Single Bills one day after the reclaiming note for the defender had been sent to the roll, and the defender now argues that this reclaiming note should not be sent to the roll, because, under the provisions of section 52 of the Court of Session Act the pursuer had really got all he wanted, viz., the possibility of attacking the interlocutor which had been pronounced by the Lord Ordinary, by the fact that the case had already been sent to the roll upon the defender's reclaiming note.

I do not think that this matter amounts to incompetency. Section 52 of the Court of Session Act does not say so. It simply says that the effect of a reclaiming note is, first of all, to submit to review all prior interlocutors—unlike the older practice in which you had to reclaim against each separate interlocutor which you disliked; and, secondly, it gives the other side the opportunity of calling in question each and every interlocutor; but it does not say that it makes a reclaiming note at the instance of the other side incompetent. Accordingly I think that this case ought to go to the roll.

I am, however, very far from saying that I think it is good practice that there should be a second reclaiming note for the purpose of doing no more than could be done on a reclaiming note taken by the other side, and it really comes to be an auditor's question and nothing else. It is quite evident that there are cases in which different results might be reached. For instance, if a party gets notice from the other side that he intends to lodge a reclaiming note and he himself at the same time wishes to reclaim, it is quite evident that he would not be in safety to trust to a simple intimation. He would be quite right to go on with his preparations so as be quite sure that the reclaiming days did not run out, because the other party might write to him and say "Now we have changed our minds," and he might find that the reclaiming days had gone.

On the other hand, if a reclaiming note has not only been intimated but also printed and boxed and the case sent to the roll early in the reclaiming days, I think it would be quite out of the question that the other party should then and there sit down and pen another reclaiming note with the view of getting the expense of it in the event of success being with him. I think the matter can be fairly left to the Auditor, who in a case where there are double reclaiming notes will fairly judge whether there was any proper reason for lodging the second reclaiming note, and if there is not, will certainly disallow the expense of it, even although that party may be successful.

LORD JOHNSTON—I quite agree with what your Lordship has said. The only point which I wish safeguarded is this, viz., I do not think that the mere written notice of one party that he is going to reclaim is a thing upon which the other party is bound to rely, because the party giving that notice may perfectly well change his mind, and if he does so just on the eve of the reclaiming days running out, then his opponent may find himself in the position of having an interlocutor against him against which it is too late for him to reclaim.

LORD SKERRINGTON—I agree.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court sent the case to the Summar Roll.

Counsel for Pursuer—Crabb Watt, K.C.—Kemp. Agents—Wylie, Robertson, & Scott, Solicitors.

Counsel for Defender—Wilson, K.C.—Wilton. Agent—J. Ogilvie Grey, S.S.C.