jury trial in the Court of Session. Proceeding upon that view we have remitted other similar cases to the Sheriff Court for proof, and I am of opinion that this would be the proper course to follow in the present case.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the appeal and remitted the case to the Sheriff for proof.

Counsel for the Pursuer and Appellant—Crabb Watt, K.C.—H. A. Young. Agents—Oliphant & Murray, W.S.

Counsel for the Defender and Respondent—George Watt, K.C.—Leadbetter. Agent—Andrew H. Hogg, S.S.C.

Thursday, July 7.

FIRST DIVISION.

[Lord Low, Ordinary.

DUKE OF ARGYLL *v.* BULLOUGH.

Superior and Vassal—Casualty—Composition—Year's Rent or Annual Value of Subjects—Valuation Roll not a Measure of Annual Value as between Superior and Vassal.

The annual value appearing in the valuation roll is not binding on a superior and vassal as the measure for determining the amount of a casualty, and where the parties differ as to the annual value the sum due to the superior as composition must be fixed by proof.

The Duke of Argyll, immediate lawful superior of the island of Rum, in the parish of The Small Isles and county of Inverness, brought this action against Sir George Bullough, proprietor of the said island of Rum, for declarator that by the death of the Marquis of Salisbury, who was the last expressly entered vassal in the said island of Rum, a casualty, being one year's rent or annual value of the lands, became due to him as superior of the lands, and that the said casualty was still unpaid, and concluding for payment of £2000 as one year's rent or annual value of the said lands.

The Marquis of Salisbury, the last expressly entered vassal, sold the lands to Captain Farquhard Campbell of Aros in 1869. The said Captain Farquhard Campbell sold the lands to the defender's father the deceased John Bullough in 1888. The defender succeeded to the lands on the death of his father, and was a singular successor of the Marquis of Salisbury, the vassal last expressly entered in the said lands.

The pursuer averred—"(Cond. 6) The said Marquis of Salisbury died on 22nd August 1903, and the entry of singular successors in the said lands and others being untaxed, the defender, as a singular successor in room of his said father of the said Marquis of Salisbury, thereupon became liable to pay to the pursuer as superior a composition, being one year's rent or annual value of the said lands and others under the usual deductions. The said lands, which constitute the whole island of Rum, are unlet and in the defender's own hands. The said island naturally forms a very valuable and attractive sporting estate. Very large sums, moreover, have been expended by the defender and his father in erecting a mansion-house and other buildings and in laying out policies and other pleasure-grounds, and generally in improving the amenity of the estate. The pursuer believes and avers that if the defender were to let the said island he could easily obtain a yearly rent of £3000 therefor. The pursuer, however, is willing to accept the sum of £2000 as in full of said composition. The defender, however, has refused to pay more than the sum of £337, 7s. 7d."

The defender admitted that the Marquis of Salisbury was the last-entered vassal in the lands and that he was a singular successor of the said Marquis. He averred that he had all along been and still was ready and willing to pay whatever casualty might be legally due by him to the pursuer.

He further averred—"(Ans. 6) The defender, prior to the raising of the action, furnished to the pursuer statements of the rental of the said lands for the year in question, and of the taxes and repairs, and is most willing to supply to the pursuer all further information. The pursuer has refused to state or even consider what deductions he is bound or willing to allow from the rental of the said lands. The pursuer has all along maintained that he is not bound to recognise the rent of the island as set forth in the valuation roll, or to consider the actual sums which have been expended on repairs. The pursuer maintains that the lettable value of the island is £3000, and that he is bound only to grant a deduction of a percentage in name of repairs without reference to the actual sums expended on them. The defender specially denies that he is only willing to pay the sum of £337, 7s. 7d. in name of casualty. The rent of the island of Rum as it appears in the valuation roll is £1466, which is the full lettable value of the subjects."

The pursuer pleaded—"The defender being liable to the pursuer in payment of a casualty or composition of a year's rent or annual value of the said lands and others, as condescended on, decree should be pronounced as concluded for."

The defender pleaded—"(1) The pursuer's averments are neither relevant nor sufficient to support the conclusions of the summons. (2) The pursuer's averments, so far as material, being unfounded in fact, the defender is entitled to decree of absolvitor."

On 4th June 1904 the Lord Ordinary (Low) allowed a proof.

Opinion.—"I took time to consider what is the proper procedure in this case, because

of the opinions to which I was referred in the case of *M'Laren* v. *Burns*, 13 R. 580, 23 S.L.R. 398, to the effect that the value appearing in the valuation roll should be taken as the basis for fixing the amount due to a superior as composition.

"That case was, however, a very peculiar one, as the property in respect of which a casualty was claimed was the lunatic asylum at Woodilee. The parties had agreed to a remit to a man of skill to report as to the annual rent or value of the lands, and the case was decided upon his report, but some of the Judges indicated the opinion that the value as appearing in the valuation roll should have been taken. I think, however, that it was not intended to lay down any rule of general application, but that the opinions were expressed in view of the peculiar circumstances of the particular case.

"The amount which appears in the valuation roll may be very good *prima facie* evidence of its yearly value, but I have never understood that the valuation roll (which is made up for a different purpose altogether) is conclusive in a question between superior and vassal.

"It therefore seems to me that I must allow a proof."

The defender reclaimed, and argued that the valuation roll was the proper criterion in determining the amount of the annual value of lands for the purpose of casualties —*per* Lord Craighill and Lord Rutherfurd Clark in *M'Laren* v. *Burns*, February 18, 1886, 13 R. 580, 23 S.L.R. 398. The pursuer set forth no grounds for holding that the value appearing in the valuation roll was inaccurate.

Counsel for the pursuer were not called on.

LORD PRESIDENT—It seems to me to be clear that the course which the Lord Ordinary has followed in allowing to the pursuer a proof of the annual value of the island is correct. It is true that as a matter of convenience the rent or annual value appearing in the valuation roll is very often taken as the measure for determining the amount of a casualty, but there is no statutory provision that the rent or annual value shall be binding on the parties for such a purpose as this. When the parties differ as to the annual value, and either of them declines to be bound by the rent or value appearing in the valuation roll, there is, in my opinion, no alternative but to allow a proof.

LORD ADAM — Mr Craigie's argument came simply to this, that if parties are disagreed as to the value of a property they will be bound by the figures appearing in the valuation roll, unless reasons are averred for holding that the valuation roll is in some way faulty or inaccurate. I do not think this argument can be maintained, and I am therefore for agreeing with the Lord Ordinary.

LORD M'LAREN — I do not know if in such a matter as this the valuation roll would even be evidence of value. Certainly it would not be conclusive evidence, and I have no doubt whatever that the Lord Ordinary was perfectly right in allowing a proof.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Defender and Reclaimer —Craigie. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the Pursuer and Respondent —H. Johnston, K.C.—Macphail. Agents—Lindsay, Howe, & Co., W.S.

Thursday, July 7.

SECOND DIVISION.

TARRATT'S TRUSTEES *v.* TARRATT'S TRUSTEES.

Succession—Will—Power of Appointment —Exercise of Power by General Settlement.

By indenture of settlement a power of appointment was reserved to a wife over certain trust funds. She died leaving only a settlement in general terms. *Held* that there was nothing in this case to rebut the presumption that a general settlement exercises a power of appointment.

The question in this case was whether a power of appointment was validly exercised by a general settlement.

Mrs Mary Stewart or Tarratt was married to David Fox Tarratt on 1st May 1865. By indenture of settlement of that date, made between the spouses, and Joseph Tarratt and John Lorne Stewart, fathers of the spouses, and the trustees under the settlement, John Lorne Stewart bound himself to pay to the trustees £1000, and after his decease £5000 more. These sums were to be held in trust for the child or children of the marriage, the income being paid to Mrs Tarratt and to her husband if he survived her. A power of appointment was reserved to Mrs Tarratt.

Daniel Fox Tarratt died intestate in 1888, survived by his wife and two children, Joseph Fox Tarratt and Mary Caroline Campbell Tarratt, who subsequently married the Hon. Osmond Hastings. He left, exclusive of funds settled by his marriage contract, a considerable amount of heritable estate, and moveable estate amounting to about £6000, of which his son succeeded to the heritage and his daughter to two-thirds of the moveables. The son and daughter also succeeded to a large amount of estate as residuary legatees of their grandmother, Joseph Fox Tarratt's share of the net residue amounting to about £100,000 and his sister's share to about £50,000. Joseph Fox Tarratt died on 31st October 1898, at the age of twenty-nine, survived by two infant sons, and leaving a will.