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.

The respondents' counsel were not called upon.

In moving the judgment of the House

The LORD CHANCELLOR said he had come to the conclusion that the judgment in this case was correct. There were two points on which it had been called in question—one as to warrandice, and the other as to fraud or improper concealment. As regards the objection founded on the clause of warrandice, it was only necessary to examine one by one the parts of that clause to see that none of those parts referred to the present circumstances. The appellant had got possession of all the subjects which had been sold or were intended to be conveyed to him; and as he had not been evicted or lost any of the subjects, he could found no claim on any such obligation of the vendors as he now set up. The utmost he could say was that he had been called on to pay something which the words of the deeds and titles might have led him to expect he was not to pay, but it would be an alarming doctrine if it were to be laid down that when a purchaser of an estate had the estate duly conveyed, and possession given, that the vendors should agree to bind themselves that each and every part of the titles would be borne out in future should certain future claims be made against it. It would be impossible to hold such a claim as that now made to be valid unless something were imported into the clause relating to warrandice which the words did not according to their ordinary meaning express. The objection founded on warrandice in this case therefore entirely failed. As regards the objection founded on misrepresentation and fraud, no authorities had been cited at the bar which supported such a claim on that ground. The moment that titles were produced, and the purchaser had the opportunity of examining them, the maxim *caveat emptor* applied. Here the agent of the vendors said there was no valid claim against the estate though a claim had been made. He acted under the *bona fide* belief that that claim so made by the mid-superior was not well founded. If he was wrong, that did not amount to fraudulent representation. If the purchaser wished to protect himself against the contingency of being sued for this casualty, he ought to have had a special warrant to that effect inserted in the conveyance, for the usual clause of warrandice and the usual duties of the vendor's agent did not protect it on the present occasion. There was thus no ground for the appeal, and it ought to be dismissed with costs.

LORD HATHERLEY concurred.

LORD BLACKBURN also concurred, and said that it would be quite mischievous to alter the meaning of a clause so well understood, and so constantly acted on in one sense. That sense did not include the protection which the appellant now sought to derive from it. As to the fraud, the vendor's agent acted *bona fide*, and told all that he required to tell. If an unfounded claim had been made against the estate, he was not bound to mention it unless he knew it was well founded. He may have had the means of discovering that it was well founded, but that was a different thing from fraudulent concealment. There was no authority cited to support the appellant's demand, and the judgment of the Court below was perfectly right.

LORD WATSON said the first question was one of Scotch conveyancing, and there could be no doubt that the usual clause of warrandice only applied in case of eviction, and there was no eviction here, nor was there even the threat of eviction. As to the objection of fraud, Mr Carment, the vendor's agent, did nothing wrong in not showing evidence of a claim which he believed to be unfounded, and as to which at most he could have only a speculative opinion. The judgment was right on both points.

The House affirmed the judgment of the Court of Session, with costs.

Counsel for Appellant—Lord Advocate (M'Laren) — Davey, Q.C. — M'Clymont. Agent—John Martin, W.S.

Counsel for Respondents—Kay, Q.C.—Asher. Agent—John Carment, S.S.C.

Monday, June 14.

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

STEELE AND OTHERS (WALKER'S TRUSTEES) *v.* M'KINLAY.

(*Ante*, July 1, 1879, vol. xvi. p. 647, 6 R. 1132.)

Bill of Exchange — Indorsation — Acceptance—Collateral Obligation—Mercantile Law Amendment Act 1856 (19 *and* 20 *Vict. cap.* 60), *sec.* 6. *Held* (*aff.* judgment of the Court of Session) that the mere signature of a party, not the drawer or drawee of a bill, upon the back thereof, there being no words of acceptance prefixed and no evidence of an intention to become an acceptor, was insufficient, according to the provisions of the 6th section of the Mercantile Law Amendment Act, to infer an undertaking by the person so signing to be answerable for the amount of the bill.

This was an appeal from the judgment of Seven Judges of the Court of Session, whose decision is reported of date July 1, 1879, *ante*, vol. xvi. 647, 6 R. 1132. The documents on which the case depended and the course of transactions between the parties are there narrated.

The pursuers (Steele and others) appealed.

In moving the judgment of the House

LORD BLACKBURN said that he had come to the same conclusion as the majority of the Judges, but not on the same grounds. He did not infer from the facts, as some of the Judges in the Court below did, that Walker drew the bill and sent it to James M'Kinlay to accept, or ever treated his signature as an acceptance. The utmost that could be properly inferred was that James M'Kinlay said that if the proposed mortgage went off then he would see the bill paid. But such an engagement could not be proved except by statutory evidence. Since the Act of 19 and 20 Vict. cap. 60, sec. 6, the law of Scotland is as the law of England was before—namely, that no undertaking to answer for a debt of a third person is enforceable unless there is a writing signed as the statute requires. The