of the truster as the same should be ascertained. The trustees found that the liquidation of these debts in the manner intended was a hopeless and impracticable operation, and they therefore obtained in 1853 the authority of Parliament to their executing an entail of the estates in favour of the last Duke under burden of the debts so far as subsisting. The question, therefore, was whether the true date of this entail was 1830, when the Duke died and his trust deed came into operation, or 1853, when the Act of Parliament was passed. The Entail Amendment Act provides (sec. 28) "that for the purposes of this Act the date at which the Act of Parliament, deed, or writing placing such money or other property under trust, or directing such land to be entailed, first came into operation, shall be held to be the date at which the land should have been entailed in terms of the trust, and shall also be held to be the date of any entail to be made hereafter, in execution of the trust, whatever be the actual date of such entail."

Lord Mure having reported the point to the Court, Mr Patton was heard thereon for the petitioner. To-day the Court unanimously held that although the point presented at first sight a good deal of complexity, and was most properly brought under the notice of the Court by Mr Kermack, the true date of the entail in the sense of the statute was 1830, when the Duke's trust deed came into operation by his death. The Act of Parliament was really obtained for the purpose of giving effect to the trust deed of 1829, although in consequence of circumstances it was afterwards thought advisable that the trust deed should not be fully carried out. The Act of Parliament only limited the effect of the trust deed, and authorised its being carried out in a limited form.

STEWART AND OTHERS *v.* THE GREENOCK HARBOUR TRUSTEES, *et e contra.*

Property—Bounding Title—Possession. Terms of a feu-contract which held to confer a bounding title and to prevent the feuar from acquiring by prescriptive possession any ground beyond the specified boundaries.

Counsel for Trustees—The Solicitor-General and Mr Shand. Agent—Mr John Ross, S.S.C.

Counsel for Stewarts—Mr Gifford and Mr Macdonald. Agent—Mr Thomas Ranken, S.S.C.

Miss Jane Stewart, residing at Liberton Manse, and her sisters raised an action against the Greenock Harbour Trustees, concluding to have them removed from a piece of ground on the east side of Virginia Street, Greenock, which they alleged was a part of a feu belonging to them. The Harbour Trustees thereafter raised an action to have it declared that the said piece of ground belonged to them. The two actions were afterwards conjoined.

The feu belonging to the Stewarts was acquired by their ancestor, Roger Stewart, in 1789, from John Shaw Stewart, of Greenock, and was described as "that piece shoar or sands wholly within the high-water mark, lying upon the north side of the high road leading from Crawford's Dyke to the town of Greenock, and upon the east side of the slip or entry of 44 feet wide, leading into the sea to the low-water mark." Then followed a particular description both of the boundaries and measurements of the feu. The stipulated feu-duty was exactly proportioned to the measurement stated. The precept of sasine directed sasine to be given of ground of the "particular mensurations" and "bounded" as before specified. The contract contained this clause—"with power to the said Roger Stewart and his foresaids to gain the said piece of shoar off the sea by stone walls or bulwarks." There was also a declaration that the superior should not have it in his power to feu that part of the shore immediately below and to the northward of the feu without first making an offer of the same to the said Roger Stewart. The high road referred to in the description is now the street called Rue End Street. The site of the slip or entry also therein referred to is now occupied by Virginia Street. The sea-shore, which was the boundary of the feu on the north and east sides, was vacant in 1789. It was averred by the Harbour Trustees that the superior contemplated feuing this ground to the north, as appeared from the clause of pre-emption above-mentioned.

By an Act of Parliament passed in 1801 the powers of the Harbour Trustees were enlarged, and they were authorised to build new harbours, piers, &c., on the shore ground within certain limits, which limits comprehended the shore to the north of Roger Stewart's feu. The trustees averred that in anticipation of this Act they had arranged with the superior for the purchase of a large tract of shore ground, consisting of upwards of five acres, and that although no formal title was granted, the agreement was concluded and possession given at Whitsunday 1801. A feu contract was executed in 1811, by which the trustees acquired "all and whole the East Harbour of Greenock, as now erecting," bounded, *inter alia*, by the river Clyde on the north and by the properties belonging, *inter alios*, to the heirs of the late Roger Stewart on the south. It was averred that the trustees in this way acquired right to the whole shore ground immediately to the north of the ground feued to Roger Stewart, and that the ground in question had been possessed by them for more than forty years. The ground had now become valuable, and hence this litigation.

On the other hand it was averred by the Stewarts that when their ancestor feued his ground, he had, in virtue of the power in his charter, embanked the ground to the north of his feu, and so gained it off the sea. For that purpose he constructed at the north end of his ground a stone bulwark which was wholly outside of the measurements specified in his contract. It was the solum on which this bulwark was erected which was now in dispute. The shore ground which the trustees had been authorised to embank was then entirely within the sea at high water, and had not been gained from the sea. The conveyance of 1811 to the trustees did not include any part of the ground within Mr Stewart's bulwark. The disputed ground had not been possessed by the trustees, but had all along been possessed by them and their tenants.

The trustees pleaded that the ground was expressly included in their charter and not in Mr Stewart's; that they had possessed it for forty years, while the Stewarts had not; and that the Stewarts had no title under which by any length of possession they could acquire right to the ground. The Stewarts pleaded that the ground in dispute was beyond the trustees' property, which they held under a bounding title, and that therefore they were entitled to be assoilzied from the declarator.

Lord Kinloch, on 9th July 1863, found that the Stewarts had right to no ground other than is contained in their charter, according to the measurement therein specified, and no right to any ground beyond said measurement in name of embankment or in respect of alleged possession. He held that Mr Stewart's charter was a bounding title, and that they had no title to any ground beyond the bounding lines. He did not think that the power given to Mr Stewart to erect a bulwark beyond his boundary in order to gain the shore ground from the sea was meant to give him any property in the ground on which the bulwark was erected.

The Stewarts reclaimed against this interlocutor, and the Court, after allowing a proof and hearing parties, adhered to Lord Kinloch's interlocutor, with expenses, subject to modification.

Lord ARDMILLAN, who delivered the judgment of the Court, said—We have here two conjoined processes—1st, an action of removing at the instance of the Stewarts; and 2d, an action of declarator at the instance of the Greenock Harbour Trustees. The true question appears to me to turn upon the state of the titles. The argument of Mr Macdonald on the proof was very ingenious; and if on the titles there was a case for prescriptive possession, I should

have felt that argument to be extremely forcible and important. I am disposed to think that the preponderance of proof in regard to the extent of possession is in some respects favourable to the Stewarts, though on some points there is conflicting evidence. But while with reference to certain points, which will be apparent in the few observations I mean to make, the proof is not without value, still it is on the terms of the title of Roger Stewart that I rest my opinion, which is that the Greenock Harbour Trustees, the pursuers in the declarator, are entitled to succeed to the extent and effect of the Lord Ordinary's interlocutor. If the feu-contract of 1789, which is the title of Roger Stewart, is a bounding title, with a reserved right to the superior to feu the ground to the northward of the piece of ground conveyed, on first making an offer thereof to Roger Stewart, then it is quite clear that Stewart could not acquire by prescriptive possession any land beyond the bounding line in his title. Such possession would be usurpation. On this point there is no doubt whatever. Therefore we must construe this title, in its descriptive clauses, and in all its clauses, to see whether it is a bounding title. The piece of ground with which we have to deal is described in the feu-contract of 1789 as—[His Lordship then read the description]—The extracts given from this feu-contract in the print of documents furnished to us before the proof was allowed did not enable us to ascertain to what extent the measurement of this piece of the shore was an intrinsic and essential part of the description in the title. But since the proof, and in consequence of a remark by Lord Deas, the entire deed has now been printed. From this it appears that the feu-duty is proportioned to the measurement, and that for the piece of shore a feu-duty is payable at the rate of 9d. per fall, and the precept of sasine refers specially to "the foresaid piece of ground and shore of the particular mensurations above expressed, and lying and bounded in manner beforementioned." This shows that the measurement of the subject was an essential part of the description, and that both in the disposition, the tenure, and the precept of infeftment, the subject is dealt with according to measurement, and is really defined by applying the measurement to the boundaries. The measurement may not, in all cases, be so conclusive of the extent of the subject as to prevent the extending of the subject by prescriptive possession, though the proof of such possession beyond measurement would require to be clear. But if the measurement taken along with the specification of certain boundaries, brings out precisely the whole of the boundaries, so as to make the space enclosed a matter of certainty, then there is a bounding title. Now, it is not necessary, in order to constitute a bounding title, that each boundary shall be a defined line traceble visibly, or by the name of one or more points on it. It may be truly a bounding line if it is a line dividing the portion of ground conveyed from what is not conveyed, so as to be ascertainable with certainty. What is here conveyed is a piece of the shore within high-water mark, of certain specified measurement, with a southern boundary line defined, and a west boundary line defined; and the north and east boundary is stated to be "the sea shore," not the sea, but the shore of the sea, being that natural subject of which a part was conveyed. This is a peculiar description. The subject conveyed is a piece of the shore bounded by the rest of the shore. The length of the subject conveyed is 100 feet, the breadth 45 feet; and the measurement of the total area, 13 falls 32 yards. Now the line of the northern boundary of this subject is just the line which separates the shore conveyed from the shore retained, drawn at a point situated 100 feet from the southern boundary which is defined. In the same way the eastern boundary is ascertained to be a line drawn 45 feet from the western boundary which is defined. These two lines, when drawn, complete the parallelogram, by forming, along with the defined boundaries, the circumscribing limits of the space conveyed, and thus make the extent of the area within the title a matter of certainty. Where part of the shore or part of a field is disponed, and where one boundary is fixed, and the immediate opposite boundary is just the line which separates what is conveyed from what is kept, then the measurement of what is conveyed necessarily fixes the precise point of the opposite boundary. On the other hand, the subjects belonging to the Harbour Trustees are described in their titles as bounded by the property of Roger Stewart on the south. If I am right in this view the title of Mr Stewart is strictly a bounding title. The area is measured in falls and yards; two of the four boundary lines are specified; the length and the breadth of the subject are given exactly in feet; and the two other boundary lines are ascertainable with certainty by applying these measurements. Therefore, unless there is something else in the feu-contract tending to confer on Mr Stewart some right to acquire ground beyond these boundaries, the question of possession does not arise, and there is no occasion to consider the effect of the proof in regard to possession. I have read that proof with care, and I think it would be of great weight if the title admitted of it, though I am not prepared to say that as applicable to possession beyond measurement it would be conclusive. The only ground relied on as supporting on this point the argument of the Stewarts is that the feu-contract gives Mr Stewart power to "gain the said piece of shore off the sea by stone walls or bulwarks," &c. I am of opinion that this clause is not sufficient for the purpose for which it is pleaded. The right given is a right to "gain the said piece of shore off the sea." It is not a right to gain more land, but to gain the "said" land—the land or piece of shore conveyed—by which word "to gain" I understand to support, protect, or secure it from the sea. The subject having been within high-water mark, the right to protect it from the sea was an appropriate and valuable right; and in regard to the nature and extent of the exercise of that right the proof taken is not without importance. But I do not think that the proof instructs that this clause was so acted on as to show that, in the view of the parties to the contract, it implied or comprehended a right to augment the subject conveyed by encroaching northward or eastward upon the seashore. The shore, and not the sea, was the boundary, and this power is in my view a power to protect only, and not to extend the subject. The evil against which the superior sought by this clause to protect Mr Stewart was the loss or injury of the subject by the sea; and the manner in which the protection was given was by conferring on him the power of securing the subjects by stone walls or bulwarks. I do not think that it is a legitimate application of the clause giving such power, to use it for the purpose of enlarging and extending the subjects conveyed. In short, I hold that this clause gives to the feuar a defensive instrument for protecting what was conveyed, and not an aggressive instrument for the acquiring of what was not conveyed. If, apart from this clause, the title of Mr Stewart is a bounding title beyond which he could not pass by prescriptive possession, then I cannot read this clause as altering his position, and giving him a right to pass beyond the limits of his title. The reservation in Mr Stewart's title of the right of the superior to feu the ground "northward of the piece of shore conveyed" is, I think, a confirmation of the view which I have now explained in regard to the construction of the clause giving power to protect the subject. It appears to me difficult to read this clause so as to enable the vassal to defeat the reservation in favour of the superior. I am therefore of opinion that the interlocutor of the Lord Ordinary should be adhered to.