

to this question there is a broad distinction in principle between salmon and mussel fishings. Salmon fishing, while not granted out, is the patrimonial property of the Crown, in which the public has no right, either of property or use. The grant by the Crown to a subject merely transfers the property from one exclusive proprietor to another. The right to mussel-scalps on the shore of the sea or a navigable river is in the Crown, not as patrimonial property, but for public uses, like the shore itself. It may, indeed, be alienated to a subject, though the principle on which such alienation is sustained is not plain, and its validity must probably be referred to immemorial usage. But the effect of a grant of mussel-scalps is clearly quite different from that of salmon fishings. It deprives the public of a right which they previously possessed. And such being the nature and consequences of the grant, the Lord Ordinary thinks that not only is it not to be presumed, but that consistently with sound principle it cannot be inferred by construction or established in any way except by a conveyance in express terms. The Crown may have the power to alienate the right from the public, but the exercise of that power, when founded on by the grantee against the public, must, it is thought, have been carried out so as to be complete in itself, without the aid of possession by the grantee to construe it."

LYON v. MARTIN AND OTHERS (*ante*, p. 34).

(Before Lord Kinloch.)

Trust—Extinction—Declarator. Circumstances in which *held* (per Lord Kinloch and acquiesced in) that a trust constituted by a marriage contract had come to an end.

Vesting. A lady having directed, in her marriage contract, that upon the death or second marriage of her husband her property should descend and belong to her children, held (per Lord Kinloch and acquiesced in) that the fee vested in the children *a morte testatoris*.

Counsel for James Martin and Others—Mr Fraser. Agent—Mr John Galletly, S.S.C.

Counsel for Trustee—Mr MacLean. Agents—Messrs White-Millar & Robson, S.S.C.

This was an action of declarator, multipointing, and exoneration brought by the beneficiaries under a marriage contract, in name of the trustee under it. The deed under which the case arose was an antenuptial contract of marriage dated in 1841, entered into between James Martin and Elizabeth Horn, afterwards his wife, whereby James Martin renounced and made over his *jus mariti* and right of administration and courtesy to the said Elizabeth Horn, and power was reserved to the said Elizabeth Horn to dispose of her estate during her life or by *mortis causa* deed without his consent. In order more effectually to preserve and maintain her estate for behoof of herself and her heirs and assignees, Elizabeth Horn conveyed the same to trustees; and it was further declared that if Elizabeth Horn should not at the time of her death have disposed of her estate, heritable and moveable, in virtue of the powers to that effect reserved to her, and in case she should predecease James Martin at any time after the completion of the marriage, then, and in that event, the right of courtesy of James Martin should revive, and be as valid as if no renunciation of it had been made, but that his right of courtesy should be contingent upon his not entering into a second marriage, and should lapse if he should ever again marry—and upon the death or marriage of James Martin, the estate of Elizabeth Horn should descend and belong to her lawful child or children, if any were of the marriage, equally among them, share and share alike; and failing such children at the death of Elizabeth Horn, then the estate was to fall and belong to certain parties therein named in life-rent and fee.

Elizabeth Horn predeceased her husband, and died in 1844 without having otherwise than as above dis-

posed of her estate. James Martin, her husband, is still alive, and has not entered into a second marriage. There were two children born of the marriage between him and Elizabeth Horn, who have both attained majority,

In these circumstances James Martin and his two children brought the present action, in name of the only surviving trustee under the marriage-contract, to have it found and declared that the purposes for which the trust was constituted have been fulfilled, and that the right formerly vested in the trustees under the same was extinct, and for distribution of the estate of Elizabeth Horn.

They contended that the provisions in their favour vested *a morte testatoris*, and that as they were the only parties interested in the estate in the events which had occurred, and had all attained majority, and were desirous that the trust should be brought to an end, the Court should find and declare as concluded for.

The trustee was quite willing that the trust should be brought to a close, but he desired judicial sanction being given to this measure, and in discharge of his duty he contended (1) that the provisions in favour of the children of the marriage had not yet vested; (2) that at all events the period for payment of their shares had not come, and that it was the intention of the trust that the trust should continue till the death or second marriage of James Martin; and (3) that he was justified in resisting the conclusions of the action until it was judicially ascertained that the trust had come to an end.

Parties having been heard, the Lord Ordinary has issued an interlocutor which, we understand, has been acquiesced in by the parties, in which he "Finds and declares that the time has arrived for the nominal raiser, William Lyon, denuding and being exonerated of the trust constituted by the marriage contract libelled, and appoints the cause to be enrolled in order to be proceeded with in accordance with this finding." In a note to his interlocutor the Lord Ordinary says:—

"The Lord Ordinary has no doubt that the two daughters of the marriage (now both major) have the fee of the trust-estate fully vested in them. It was conceded that their father had a life-rent in the heritable subjects, defeasible by his contracting another marriage. There appears to the Lord Ordinary no reason why, with mutual consent, the daughters should not have the fee conveyed to them, subject to this defeasible life-rent."

HOUSE OF LORDS.

Monday, Feb. 26, and Tuesday, Feb. 27.

BECKETT v. HUTCHESON.

Road Trustees—Jurisdiction of Court of Session.

Held (aff. Court of Session) that Road Trustees acting in execution of an Act of Parliament were not controllable by the Court of Session in regard to a matter committed to their discretion, as to which the review of the Court of Session was excluded.

Counsel for Appellant—The Attorney-General (Palmer), and Mr Anderson, Q.C. Agents—Messrs J. & F. Anderson, W.S., and Messrs Deans & MacLuekie, London.

Counsel for Respondent—Mr Rolt, Q.C., and Mr Buller. Agents—Mr John Forrester, W.S., and Messrs Loch & M'Laurin, London.

This is an appeal from an interlocutor of the Second Division of the Court of Session, deciding that the Statute-Labour Road Trustees of the Eighth Statute-Labour District of Dumbartonshire have such a discretion vested in them by the Act from which they derive their authority (10 Geo. IV., cap. 71), as renders them uncontrollable by the Court of