well founded on the ground of reconvention. It does not matter whether we call this plea reconvention or not. I think if we are to give it a name at all, I know no name so good as reconvention. It is more appropriate than prorogation of jurisdiction. It was matter of argument whether reconvention is prorogation of jurisdiction or not. Pothier and Heineccius are both of opinion that it is a species of prorogated jurisdiction. Other jurists think it is not. But that appears to me to be a mere war of words depending upon what you take to be the meaning of the word prorogation. If you understand prorogation to be what a man voluntarily does—what he wants to do—then reconvention is not prorogation. But if prorogation is not confined to that, if you take prorogation in a wider sense, there is no difficulty in bringing reconvention within it. Now, that being the case, can a man be allowed to take the benefit of the jurisdiction of this Court, and at the same time refuse its jurisdiction in respect of matters intimately connected with the matter, in respect of which he claims jurisdiction? The question to be tried here is, which of these two ships is liable, and accordingly the action which is brought the very next day by the master and owner of the ship, and which is called in Court at the same time as the action first executed, is as clearly an action at his instance in his representative character as the other is against him as representing the ship. It is not an action at the instance of Massa individually. I don't see how he could sue individually. The only way would be that he was said to be in fault and that there might be some back claim against him in respect of that fault. But this action is raised as master and as representing the vessel. How can it be said that the action is to go on at his instance as representing the ship, in order to get damages for behoof of the ship, and that the counter action cannot go on? I look upon these actions as in the same position so far as the master is concerned. And I don't think there is any charm about the words *convention* and *reconvention.* They do not imply that you must have convention before you have reconvention.

Lord ARDMILLAN—There is only one point upon which I feel hesitation, and that is the effect of the arrestment to found jurisdiction. That question is one of much delicacy, but I have come to be of the same opinion as your Lordship, and for the same reasons.

I think the original action brought against Massa, as representing the owner, is an action in which arrestment of the ship—the ship being the instrument by which Massa is said to have done the wrong—was sufficient to create jurisdiction against him as representing the ship and the unknown owners of her in matters respecting the collision. The delicacy is that he is also sued as personally liable. On the whole, I think the sound view of it is, that the jurisdiction, which would have been well founded as against the owners, and would have been well created against him as representing the owners, is not destroyed merely because there is an additional and subsidiary conclusion against the master personally.

I have no difficulty as to the second point. But I do not view the second plea in law for the defender as raising the plea of reconvention. I am satisfied that the strict plea of the civil law is not raised under the present circumstances. The circumstances here are adverse to the principle out of which the plea of reconvention arises. That principle is, that the party who has invoked the jurisdiction of a foreign country shall not be entitled to revoke the jurisdiction so invoked in a matter arising out of the same circumstances and of the same nature. But while I think that that is the nature of reconvention, I don't think the broad principle is to be excluded because we hold that this is not reconvention. In the case of Thomson, I came to the conclusion that reconvention is an equitable rule of compensatory pleading to prevent multiplicity of litigation and divided suits. I am still of that opinion.

I think this holds in this case. I can't understand anything more inexpedient than to refuse the jurisdiction of this country in one action against a party appealing to it in another, and that when the matter of both actions arises out of the same collision at sea.

I think the legal principle upon which jurisdiction is created in this case is, that the defender, Massa, has, by his own conduct, created a bar which prevents him from pleading no jurisdiction in this case.

The Court therefore adhered to the interlocutor sustaining the jurisdiction.

Agent for Morison and Milne—John Henry, S.S.C.

Agents for Bartolomeo and Massa—Murdoch, Boyd, & Co., S.S.C.

Tuesday, Dec. 11.

FIRST DIVISION.

PETITION—FLETCHER AND OTHERS.

Practice—Records—Entail—Nobile Officium. Form of procedure in an application for recording in the Register of Tailzies two deeds already recorded in the Books of Council and Session, and in the custody of the keepers thereof.

This was a petition enrolled before the Junior Lord Ordinary for "warrant to the Lord Clerk-Register and other Keepers of the Records to transmit to the Clerk to this application" two dispositions and deeds of entail which were recorded in the books of Council and Session; "and upon the same being produced, to interpone your authority to the said dispositions and deeds of entail, and to grant warrant to the Keeper of the Register of Tailzies for recording the same agreeably to the Act of Parliament 1685, cap. 22."

The Lord Ordinary having doubts as to the competency of his making the order craved upon the Keepers of the Records, reported the matter verbally.

The petitioners founded upon the Act of Sederunt 24th December 1838, sec. 15, which provides "that when any deeds, or steps, or warrants of extracted processes, deposited with the Lord Clerk-Register, are required in processes depending before the permanent Lords Ordinary, it shall not be necessary to apply to the Inner House for a warrant for the transmission of such documents, but the Lords Ordinary before whom the causes depend may grant such warrant."

The Court observed that the proceeding should be under the authority of the Inner House, and directed the Lord Ordinary to frame an interlocutor proceeding upon that authority, and providing that the documents should always remain in public custody, and should be retransmitted to the Keepers of the Records as soon as they were recorded in the Register of Tailzies.

The petition was accordingly amended so as to

pray alternatively for an order on the Keepers "to appear before your Lordships and exhibit" the deeds; and this being done, the Lord Ordinary pronounced the following interlocutor:—

"The Lord Ordinary having advised with the Lords of the First Division of the Court, as authorised by them, grants warrant to and authorises the Lord Clerk-Register and the Deputy-Keepers of the Records to exhibit in Court before the Lord Ordinary on Thursday next, at o'clock, the two principal dispositions and deeds of entail mentioned and referred to in the petition, and appoints a copy of this interlocutor to be immediately served on the said Lord Clerk-Register and his deputies.

"DAVID MURE."

Mr Robertson, one of the Deputy-Keepers, having, in compliance with this order, appeared in Court and exhibited the deeds, the following interlocutor was pronounced:—

"*Edinburgh*, 13*th Dec.* 1866.—The Lord Ordinary, in respect Mr George B. Robertson, one of the Deputy-Keepers of the Records, has exhibited in Court the two principal dispositions and deeds of entail mentioned and referred to in the petition and interlocutor of 11th instant, interpones authority and grants warrant to the said Deputy-Keeper of the Records to deliver the said two principal dispositions and deeds of entail to the Keeper of the Register of Tailzies; and this being done, grants warrant to the Keeper of the Register of Tailzies for recording the same, agreeably to the Act of Parliament 1685, c. 22, and authorises the said keeper to return the said deeds to Mr Robertson, the said Deputy-Keeper of the Records, when they shall have been so recorded in the said Register of Tailzies, and decerns.

"DAVID MURE."

Counsel for Petitioners—The Solicitor-General and Mr Shand. Agents—Tods, Murray, and Jamieson, W.S.

SECOND DIVISION.

LORD ADVOCATE *v.* LORD FIFE.

Succession Duty Act—Trust—Vesting—Deductions. Circumstances in which held—1. That where a party had executed a trust-deed under which his trustees were to denude in favour of his successor on his death, the succession opened at the date of the death and not of the denuding deed. 2. That deductions could not be allowed to modify the amount of succession duty due because they formed no part of the annual cost of the estates.

In 1863 an information was lodged by the Crown against Lord Fife, in consequence of which the following special case was prepared to obtain the opinion of the Court on the question with which it concluded:—

The Lord Advocate claims succession-duty on the Innes estates, on the ground that there was a succession to these estates on the death of James Duff, Earl of Fife, on 9th of March 1857.

Predecessor, James Duff, Earl of Fife, who died 24th January 1809.

Successor, James Duff, present Earl of Fife (fifth Earl).

Annual value, after allowance for all necessary outgoings, £9403, 17s. 7d.

Age of the successor when he succeeded, forty-two.

Value of his succession, £136,128, 5s.

Rate of duty, 3 per cent.

Amount of duty, £4083, 17s.

Penalty, £136, 2s. 6d., for having wilfully neglected to deliver, on the 9th March 1858, an account of the succession, and a like penalty for every month after the first month, during which such neglect has continued and shall continue.

(The value of the succession above inserted is not to be held conclusive, but subject to after-adjustment between the Crown and Lord Fife, who reserves right to object to the statement of the said annual value accordingly.)

The following are the facts as to which the parties are agreed, upon which the question arises for the decision of the Court:—

1. James Duff, second Earl of Fife, was proprietor in fee simple of the estates hereinafter called the Innes estates. He died on 24th January 1809, leaving the testamentary deeds and writings mentioned in the next article, by which the Innes estates were settled on the heirs, and in the terms therein mentioned.

2. The said deeds and writings consisted of—(1.) Three deeds of entail, the first dated 7th December 1789, and recorded in the register of tailzies, 18th November 1791; the second dated 29th January 1800, and recorded 30th June 1831; and the third dated 18th November 1801, and recorded 30th June 1831; (2.) Trust-disposition, which comprehended the Innes estates, and all his other heritable and moveable property, dated 28th November 1801, and recorded in the books of Council and Session 9th August 1814; (3.) Deed of declaration and obligation, dated 7th August 1802, and recorded in the books of Council and Session 9th August 1814; (4.) Holograph letter and directions, 23d November 1805, recorded in the books of Council and Session 9th August 1814.

3. These deeds and writings (along with two other writings, the first dated 17th April 1805, and the second dated 20th January 1806, which related merely to the nomination of trustees, and which accordingly need not be referred to) formed the will of the said James Duff, second Earl of Fife.

4. The destinations, in the said deeds of entail, are to be taken for the purposes of this case as identical—viz., "to myself and the heirs-male of my body; whom failing, to Alexander Duff of Echt, my eldest brother-german, and the heirs-male of his body; whom failing, to George Duff of Milton, my second brother-german, and the heirs-male of his body," &c.

5. One of the said deeds of entail, and the other deeds and writings, are printed in the appendix to this case, and are here referred to, and held as repeated *brevitatis causa.*

6. Upon the death, without issue, of the said James, second Earl of Fife, on 24th January 1809, the said Alexander Duff of Echt became the third Earl of Fife. He died in 1811, survived by two sons—viz., James Duff, afterwards fourth Earl of Fife, his eldest son, and Alexander, afterwards General the Honourable Sir Alexander Duff. James Duff, fourth Earl of Fife, died on 9th March 1857, without issue. His brother, Sir Alexander Duff, predeceased him, and his nephew, the defender, succeeded him as fifth Earl.

7. Sir James Duff of Kinstair, one of the trustees under the said trust-disposition, and described in the said deed as Lieutenant-General Sir James Duff, Colonel of the 50th Regiment of Foot, died on 6th December 1839.

8. Before the death of James, fourth Earl of Fife, the debts due by the second Earl, his obligations and funeral charges, and all the legacies, donations, and provisions left by him under the