£1500, but restrictable in terms of the Aberdeen Act. Of course, if the free agricultural rental is now to be reduced to £220, that has a material effect on these provisions, and a question might have arisen whether this charge could have been effected in the face of this bond? But this lady is, in the first place, in her 71st year, and we have, besides, the consent of all parties interested in this bond of provision. The petitioner's eldest son has also by a formal minute stated that he desires that the application should be granted; all the members of the family, in short, concur in the application, and accordingly I propose that your Lordships should grant authority as craved.

LORD DEAS, LORD MURE, and the LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel for the petitioners on the reclaiming note for them against Lord Adam's interlocutor of 6th November 1877, Recal the interlocutor in so far as it finds that it would not be beneficial to the estate that it should be charged with any greater expenditure in respect of improvements on the mansion-house, &c., than £1500: Find that the petitioners ought to be allowed to charge the estate on this account with the full amount of £3090 of improvement expenditure: Remit to the Lord Ordinary to modify and alter his interlocutor so as to give effect to this finding, with power to his Lordship to dispose of the expenses incurred in the Inner House."

Counsel for Petitioners—Rutherfurd. Agents—Frasers, Stodart, & Mackenzie, W.S.

Friday, December 14.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

MACKENZIE *v.* CATTON'S TRUSTEES AND ANOTHER.

Husband and Wife—Marriage-Contract—Entail—16 *and* 17 *Vict. cap.* 94, *sec.* 24—*Reduction of an Excambion on the ground of Fraud by a Succeeding Heir of Entail.*

An heir of entail in possession of an entailed estate obtained in 1865 a decree of the Court under the Acts 6 and 7 Will. IV. cap. 42, 11 and 12 Vict. cap. 36, and 16 and 17 Vict. cap. 94, authorising an excambion of certain parts of the entailed lands for certain other lands belonging to him in fee-simple. Having executed a contract of excambion in pursuance of that decree, he, some years afterwards, conveyed the lands so excambed to the trustees under a marriage-contract entered into between his daughter and her husband, for behoof of her and him in liferent and the children of the marriage in fee. In a reduction of the decree, brought eight years afterwards by a succeeding heir of entail against the marriage-contract trustees and the only child of the marriage, on the ground of irregularity in the proceedings, and of fraud on the part of the original petitioner for the excambion—*held* that the proceedings were, under the 24th section of the 16 and 17 Vict. cap. 94, final, the marriage-contract trustees and the child being "third parties acting *bona fide* on the faith" of the decree.

Husband and Wife—Fraud—Marriage-Contract—Liability of Singular Successors under a Marriage-Contract for the Fraud of their Author.

Held that the right of marriage-contract trustees and the heir of the marriage taking benefit by such a transaction as that narrated above is not liable to reduction by reason of the fraud of the party who conveyed to them in the marriage-contract.

Observed (*per* Lord Shand) that "it is quite settled that a marriage-contract is an onerous transaction, as much as a purchase or a loan would be."

Counsel for Pursuer (Reclaimer)—Balfour—Moncreiff. Agent—A. P. Purves, W.S.

Counsel for Defenders (Respondents)—Rhind—Hunter. Agent—Robert Menzies, S.S.C.

Saturday, December 15.

SECOND DIVISION.

[Sheriff of Renfrewshire.

PAUL SWORD & COMPANY *v.* HOWITT.

Ship—Charter-Party—Bill of Lading—Master's Gratuity—Liability of Assignee of Bill of Lading to Pay Gratuity.

The master of a ship sued the assignees of certain bills of lading for payment of a gratuity which it was stipulated should be paid "on right and good delivery of the cargo." This stipulation was in all the bills of lading but one, and the charter-party also contained it. The bill of lading which did not contain it stated that the freight was to be paid as per charter-party. The defence was that there was no right and good delivery of the cargo, it having been received in a damaged state; and further, that the stipulation to be binding must be contained in the bill of lading. *Held* that the defences must be repelled, in respect (1) that the terms of the charter-party, including the stipulation for gratuity, must be read into the bill of lading; and (2) that it was not averred that the damage was due to the fault of the master; and that in these circumstances the gratuity was as much due by the assignees as payment of freight.

By a charter-party, dated 11th May 1874, between the pursuer, who was master of the ship "Kishon," and Fraser, Eaton, & Co., merchants at Sourabaya, it was agreed that a cargo of sugar should be shipped on board the pursuer's ship at various ports in Java to go to the United Kingdom. The terms of the charter-party, *inter alia*, were—"And deliver the same on being paid freight at the rate of £3, 12s. 6d. . . . per ton of 20 cwt. nett weight delivered, and 1s., say one shilling,

per ton gratuity for the captain on good delivery of the cargo (the act of God, &c., ... "and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever during the said voyage always excepted) . . . . The freight to be paid on the right delivery and final weighing of the cargo."

At Sourabaya there were shipped 723 baskets of sugar, conform to bill of lading, dated 16th May 1874, which bore that they were in good order and well-conditioned, and was in the following terms as regards freight—"And are to be delivered in the like good order and well-conditioned at the port of discharge (the act of God, the Queen's enemies, fire, and all and every other dangers and accidents of the seas, rivers, and navigation, of whatever nature or kinds soever, excepted) unto orders or to its assigns paying freight for the said goods, as per charter-party, dated Sourabaya, 11th May 1874." At Pekalongan and Tazal other baskets of sugar were shipped, conform to five bills of lading, the first dated 28th May 1874, each bearing that the sugar mentioned in it was shipped in good order and well-conditioned, and all with this addition as regards gratuity—"One shilling per ton gratuity to the captain on right and good delivery of the cargo."

The "Kishon" arrived in Greenock on the 19th October 1874.

Prior to the arrival of the vessel the defenders Paul Sword & Co. had purchased the cargo, and on receiving delivery of it they paid freight at the rate of £3, 12s. 6d. per ton, but declined to pay the 1s. per ton in name of the master's gratuity. He now therefore sued them under the Debts Recovery (Scotland) Act 1867 for £34, 6s. 6d., the sum he alleged was due to him under that head, in terms of the bills of lading and charter-party.

It was admitted by the pursuer that a considerable quantity of the sugar was damaged on the way home, but he alleged that the ship had encountered heavy gales and had shipped a great deal of water, that all possible means had been used to prevent damage to the cargo, and that what damage had been occasioned arose from the perils of the sea and accidents of navigation, or other exception specified in the charter-party as above narrated; and although the defenders denied this, they did not aver that the damage was caused by the fault of the pursuer.

The defenders, *inter alia*, averred that "according to the custom, practice, or usage at the ports where the sugars were shipped, no gratuity is payable to the master at the port of discharge, under a contract similar to the one contained in the bills of lading produced by the defenders if the cargo is to any extent damaged, no matter from what cause, the master undertaking the sole risk. The custom, practice, or usage prevailed at the ports referred to when the sugars in question were shipped, and is binding on the pursuer." This the pursuer denied.

The pursuer pleaded, *inter alia*—"(1) The one shilling per ton of gratuity mentioned in the account sued for, having, by the charter-party and relative bills of lading, been agreed to be paid to the pursuer, he is entitled to decree as concluded for. (3) As both the charter-party and bills of lading contain the usual exceptions of damage arising from perils of the seas, any damage to the cargo of the 'Kishon' arising from such perils cannot be pleaded against the pursuer's right to the one shilling per ton of gratuity. (4) As any damage that the cargo of the 'Kishon' sustained arose from no fault on the part of the pursuer (the master of the vessel), but from perils of the seas, such damage does not bar the recovery by him of the gratuity."

The defenders pleaded, *inter alia*—"(4) The pursuer having failed to give right and good delivery of the sugar mentioned in said bills of lading, he is not entitled to payment of the gratuity sued for. (5) It being a condition precedent to payment of said gratuity that 'right and good delivery' be given of the cargo, and the pursuer not having given such delivery, he is not entitled to the sum claimed; and the defenders for themselves, or in trust for others, are entitled to withhold payment of the same. (6) The custom, usage, or practice at the ports where the cargo was shipped being as stated in article 8, and such custom, usage, or practice being binding on the pursuer, and a portion of the cargo having been delivered in a damaged state, the gratuity sued for has not been earned. (7) No gratuity being stipulated by the bill of lading, of date 11th May 1874, and the whole terms of the charter-party not having been incorporated therein, the defenders, as the holders of the said bill of lading, or receivers of the cargo under the same, are not liable in payment of the sums sued for, so far as effeiring to the sugars mentioned therein."

The Sheriff-Substitute (SMITH) pronounced an interlocutor, finding, *inter alia*, that the case was such that it could not be disposed of according to the summary procedure of the Debts Recovery Act, and remitting it accordingly to the Ordinary Roll. He added this note:—

"*Note.*—It does not appear that the defenders' first plea (which disputed the competency of bringing the action under the Debts Recovery Act, is sound. It has been held more than once by the Supreme Court that the Act of 1867 must receive a liberal construction, and if the present claim does not fall strictly within the category of 'servants' fees,' it certainly is a very 'like debt.' It is a demand by the captain for remuneration stipulated to be paid for his services in the 'right and good delivery of the cargo.'

"But while the action seems competent, it appears to the Sheriff-Substitute to be one where he ought to exercise the power given him, by the 8th section of the Act, to remit to the Ordinary Court. A great many questions, both of fact and of law, have been raised. Moreover, the defenders propose to lead evidence in Java. That of itself, if allowed, would prevent the case from being very speedily decided, and speed is, perhaps, the solitary advantage which this Court generally possesses over the Ordinary Court. As that advantage must probably be lost to the pursuer, even if this case were not remitted, the Sheriff-Substitute has the less disinclination to order the remit, though he thinks that, even apart from that, it would be expedient to do so."

That interlocutor was acquiesced in.

The Sheriff-Substitute thereafter pronounced an interlocutor containing, *inter alia*, the following findings in fact and law—"(7) That the defenders do not aver that the damage which was

sustained by some of the sugar was caused by the fault of the pursuer, and that the survey report bears that 'the cargo was well stowed, properly dunnaged, and the packages landed in good condition, as far as the care of the ship and those in command can be held accountable for:' Finds in law that the defenders are not entitled to a proof of the alleged custom, practice, or usage at the ports of shipment, and that, according to the sound construction of the bills of lading and charter-party, the pursuer was entitled, after the delivery of the cargo to the defenders, to a gratuity of 1s. per ton on the whole sugars delivered: Therefore repels the pleas stated for the defenders, and decerns against them in terms of the conclusions of the summons," &c.

On appeal the Sheriff (FRASER) adhered, adding the following note:—

"*Note.*... By the charter-party it was stipulated as follows—[*clause supra*]. Had the case depended upon this clause there could be no doubt that the pursuer would be entitled to his gratuity although the goods carried were damaged by accidents of the sea.

"But there was the bill of lading, and it is said that that document made an entire change upon the terms of the contract. The words of it are—[*clause of bill of lading of 28th May, supra*].

"Had the last eight words not been in this document there would have been no room for question that the captain was entitled to his gratuity although the goods had been damaged by perils of the sea. It is the insertion of these words which creates the difficulty. Are they simply a repetition of the good order and well-conditioned clause which goes before, and which contains the exception of perils of the sea? Or do they constitute an absolute condition that nothing shall be paid to the captain, although the goods be damaged only by the act of God, &c.? The words are susceptible of either interpretation, and the Sheriff has to state that his first impression was that they constitute an absolute condition to the obtaining the gratuity that the goods shall be delivered undamaged. The word 'gratuity' implies that it is given as a reward for avoiding damage which without extraordinary care would be met with in the course of a voyage. It is a payment for results. A captain has it in his power by extraordinary carefulness to save his cargo from injury, and at the first blush of the thing one comes to the conclusion that this reward or gratuity is not to be paid if there be not good and right delivery of the cargo, although this has been prevented by storms.

"On considering the whole matter, however, the Sheriff does not think that it would be reasonable to construe this contract so strictly. It does no violence to the grammatical wording of the bill of lading to hold that the exception of the perils of the sea is imported into the clause in regard to the captain's gratuity. But what weighs most with the Sheriff is this, that the charter-party gives this construction, and it is not to be presumed that the two documents were intended to be read in regard to this particular in contrary senses.

"Further, in a case of this kind the construction must be against the person who drew up the writing which is to be construed, if it be ambiguous. It was his duty to make it clear. The bill of lading, no doubt, was signed by the captain, but it is drawn up by the shipper, who in this matter is the same as the consignee. . . .

"The demand made for a proof of custom at the port of shipment cannot be acceded to. The case must be determined upon the language employed in the writings produced, and these cannot be allowed to be controlled by any proof of custom or usage at the port of shipment."

The defenders appealed to the Court of Session.

Authorities—Kay on Law relating to Shipmasters and Seamen, i. 346; *Wegener* v. *Smith*, November 6, 1854, 24 L.J., C.P. 25; *Smith* v. *Sieveking*, April 28, 1855, 24 L.J., Q.B. 257, aff. 5 Ellis and Blackburn, 586; *Chappel* v. *Comfort*, May 29, 1861, 31 L.J., C.P. 58 (Willes, J.); *Fry* v. *Chartered Bank of India, &c.*, June 21, 1866, Law Rep., 1 C.P. 689; *Gray* v. *Carr*, June 15, 1871, Law Rep., 6 Q.B. 522 (Brett, J.); Bell's Com. i. (5th ed.) 567 (M'Laren's ed. 614); Abbot on Shipping. 11th ed. 361 and 380; Maul and Pollock, 88–89; 18 and 19 Vict. c. 111; Smith's Mercantile Law, 317, (9th ed.); *Callander and Others* v. *Cavan Brothers & Company*, December 8, 1853, 16 D. 146.

At advising—

LORD JUSTICE-CLERK—There are two questions which were argued to us in this case. The first is, Whether by the terms of the bill of lading of the 16th of May 1874 the claim of the master for his allowance or gratuity was or was not included, so as to make that a charge and burden on the assignee and the receiver of the goods? The second is, Whether that claim, supposing it to be good, is forfeited in respect that the goods were not safely carried?

I am of opinion that on both these questions the claim of the master is entitled to prevail.

In regard to the first, the terms of the bill of lading of 16th May 1874 are these—[*reads as above*]. It is said that that makes no reference to the master's privilege, and that as his gratuity is not expressed there, the authorities show that the recipient or assignee is not liable for implement expressed in the bill of lading. On that last point I have no doubt at all that the consignee will not be liable for anything not expressed in the bill of lading, and the cases quoted were cases where other matters, such as demurrage and liabilities of that kind, not of the nature of freight at all, were not held to be laid on the consignee as a condition of delivery if they were not expressed. But that is a totally different matter from paying freight—that is to say, the charge of the carriage of the goods—as per charter-party, and importing into the bill of lading the whole of this charter-party.

When we turn to the terms of the charter-party, I think this comes out with distinctness, because the freight to be paid and the master's gratuity are in the general language of trade included in the same thing. In the charter-party the expression is this—"deliver the same on being paid freight at the rate of £3, 12s. 6d. per ton of 20 cwt. nett weight delivered, and 1s. per ton gratuity for the captain on right and good delivery of the cargo." In regard to the nature of this demand, it is entirely different from the kind of applications referred to in the cases quoted. It seems to be one of the most ancient conditions of the charter-party that the master's gratuity or privilege is just so much of what has to be paid,

and truly has just as much to be paid in implement or fulfilment of a contract as what has otherwise to be paid.

I am therefore of opinion that on any reasonable reading of this bill of lading the master's claim must be paid.

In regard to the second point, it does not appear to me that there is any foundation for it. There may possibly be claims for the damage done to the goods, if that were done by the carelessness of those in charge. That is a different matter, but in the meantime, as a condition of delivery, I am of opinion that the gratuity to the master is as much due by the consignee as payment of the freight. And I may say on this matter that the claim for primage or gratuity is so general that the usual thing is to include it in the account for freight, and the owner of the vessel frequently receives the amount of gratuity in addition to the freight without its going through the master directly, in which case it has been decided that unless there is an express stipulation to the contrary the master has a direct claim against the owner for the amount included in the freight which was to be paid by him by the charter.

On these grounds I think the master's claims should be sustained.

Lord Ormidale—Although the money consideration in this case is trifling, the principle involved may and is said to be important, as similar cases frequently occur in the Court at Greenock, and if in Greenock, I presume in other sea port towns as well.

In regard to the defenders' liability for the gratuity due to the pursuer under the bills of lading, which expressly bear that it is to be paid to the captain "on good and right delivery of the cargo," I think there is no room for doubt, the cargo having been taken delivery of by them. It was argued, however—and this was really the only point attempted to be made by the defenders—that the delivery of the cargo was not "good and right," seeing that it had been to some extent damaged in the course of the voyage. But it must be kept in view that by the charter-party the pursuer only undertook to make "good and right delivery" of the cargo, the dangers of the sea amongst other risks being excepted. Now, it is not disputed that the damage which the cargo sustained was occasioned by the unavoidable dangers of the sea. I am quite clear therefore that "good and right delivery" in the sense of the charter-party and bills of lading was made in this case, and that being so, that the defenders are liable under the bills of lading in question to the pursuer for the corresponding gratuity as claimed by him.

In regard to the liability under the remaining bill of lading, the matter is not quite so clear, for it does not make any express reference to the master's gratuity. But it does bear that the cargo is to be delivered only on payment of the freight as per charter-party. This necessarily referred the defenders when delivery of the cargo was taken by them to the charter-party in order to ascertain the amount of the freight, and they could not read the charter-party without observing that they were bound to pay on delivery, besides the freight, a gratuity to the master as now claimed. Now, when the meaning and object of the gratuity are kept in view, and that naturally as well as by the express terms of the charter-party it fell to be paid along with the freight on delivery of the cargo, I have not had much difficulty in coming to the conclusion that the defenders are liable for the master's gratuity under this as well as the other bills of lading, the more especially as the defenders make no averment to the effect that any other provision or arrangement had been made regarding it. The English cases cited in argument for the defenders related not to the master's gratuity, but to demurrage, a matter entirely different, and requiring to be separately established, and therefore I cannot hold them as precedents in point at all. The authority of Mr Bell, who says (Principles, section 420) that freight "includes primage or hat money," which is just a gratuity to the master as quite claimed, is quite in point, and goes far to support the result at which I have arrived in concurrence with both the learned Sheriffs. The statements on the subject in M'Lachlan (Treatise on Merchant Shipping pp. 419 and 497), as I read them, are substantially to the same effect.

I am therefore of opinion that the judgment complained of ought to be affirmed, and the appeal dismissed.

Lord Gifford—I am of the same opinion. Generally a question may be raised on all bills of lading, and it is this, Whether the expression used in the bill of lading, that the master's primage or allowance is to be paid on good and right delivery of the cargo, implies a condition that if on any account whatever, apart altogether from the blame attachable to the master, injury is sustained, the claim for primage is forfeited.

Now, a condition of that kind might in some cases prevail, but in the bills of lading here that is not the true reading. The charter-party is not altogether unimportant here, because it shows the general contract under which the vessel goes. I do not require to refer to it, but I think the words given are "right delivery." I think they are repeated twice in the bill of lading, and they really have the same meaning in both places. It is plain from the fact that that clause has reference to the owner of the ship that it is not a condition in reference to the master. The "right delivery" under a bill of lading means such delivery as the carrier of goods is bound to make, and if he is not liable for a peril of the sea in reference to the freight, I think it would be very difficult to hold that the captain, who is blameless in reference to the injury which the goods have sustained, is to forfeit his gratuity although the owners of the ship are not to forfeit their freight. Therefore I think good delivery under the contract is applicable to both the one claim and the other; and if the freight is not forfeited by the accident—the act of God which happened to the cargo on its voyage—then the captain does not forfeit his gratuity either. The right delivery under the contract is referable to the time when the thing becomes payable, and it is not a condition of payment that the goods must be delivered in good condition.

The specialty in the other question arises under the circumstance that one of the bills of lading contains the stipulation only for freight, without mentioning the captain's gratuity. But then it makes special refereuce to the charter-party, and

it was essential for the holder of the bill of lading to look to the charter-party to see what was meant. I concur in your Lordships' opinion that the captain's gratuity in a general sense is really part of the freight. It is given for the same thing—the carriage of the goods; and Professor Bell in his Principles lays down the general proposition that freight "includes primage or hat money"—an earning that the general expression "freight" may include, although it is sometimes used in contradistinction, *i.e.*, one part of the freight is used in opposition to the others. Still the primage of the captain is as much payment for carriage as the payment for the use of the ship. And here there is special reference to the charter-party. It is very difficult for the party who receives that bill of lading, and who must look to the charter-party to see its conditions, to say—"Oh! the freight which I undertook to pay is freight in the strict sense of the word, and not that part of the freight which is to be paid to the captain separately." Therefore I hold that on both points both the learned Sheriffs are right.

The Court adhered.

Counsel for Pursuer (Respondent)—Balfour—M'Kechnie. Agent—John Galletly, S.S.C.

Counsel for Defenders (Appellants)—Lord Advocate (Watson)—Trayner. Agents—Mason & Smith, S.S.C.

Wednesday, December 19.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

DUNBAR'S TRUSTEES *v.* THE BRITISH FISHERIES SOCIETY.

Superior and Vassal—Feu-Contract—Liability for Road Assessment and Poor-rates—Clause of Relief from Public Burdens Payable now or "in all time coming."

A feu-contract contained a clause of relief by the superior in favour of the vassals "to free and relieve" them "of the whole cess or land-tax, feu-duties or other duties, ministers' stipends, schoolmasters' salaries, and other public burdens due and exigible out of the whole lands and subjects hereby feued, or that may become due and payable for or from the same in all time coming."—*Held* (1) in respect of previous judgments of the Court upon such clauses of relief, that (*a*) they cover all burdens except such as have been "imposed by supervenient legislation;" (*b*) that they therefore cover poor-rates; and (*c*) that liability under them is not restricted to the proportion of assessments effeiring to the feu-duty; and (2) that under the clause above quoted the measure of the sum demandable in relief was not limited by the amount of the feu-duty.

Observed that the intention of parties as disclosed in the feu-contracts is of importance in deciding the measure of the liability between superior and vassal under clauses of relief from public burdens.

Public Burden—Clause of Relief—Road-Money.

Held (*diss.* Lord Ormidale—*revg.* Lord Curriehill) that assessments imposed under certain Private Acts relating to the Caithness County and Wick Burgh Roads passed in 1830, 1838, and 1860, were not covered by an obligation in a feu-contract, dated in 1823, to relieve a vassal from public burdens payable "now" or "in all time coming."

The trustees of the late Sir George Dunbar, Bart. of Hempriggs, in the county of Caithness, and Garden Duff Dunbar of Hempriggs, raised this action against "The British Fisheries Society," who were previously incorporated as "The British Society for extending the fisheries and improving the sea-coasts of this kingdom," but were re-incorporated under the previous title by the "Pulteney Harbour Act 1857." The summons concluded for declarator "that the pursuers have not been and are not bound to free and relieve the defenders of any sums which have been or may be paid, or have become or may become payable, by the defenders or others deriving right through or from them as or in name of (first) County of Caithness Road Assessments; (second) Burgh of Wick Road Assessments; (third) Poor-rates—all in respect of the lands feued to the British Society for extending the fisheries and improving the sea-coasts of the kingdom by the late Sir Benjamin Dunbar of Hempriggs, Bart., by feu-contracts of dates 25th March and 10th April 1807, and 2d and 19th April 1823 respectively, or of the buildings or works erected thereon, or any part of the said lands, buildings, or works; or otherwise, that the pursuers have been and are liable only for such proportion of the said burdens or any of them as effeirs to the feu-duty payable to them; and further, and in the event of its being found that the pursuers have been, are, and will be bound to relieve the defenders of the sums which have been or shall be paid, or which have become or shall become payable, by them in respect of the said assessments, or any of them, or any part thereof, then it ought and should be found and declared that the defenders have not been, are not, and will not be, entitled to claim from the pursuers, and that the pursuers have not been, are not, and will not be, bound to pay to the defenders, in respect of any single year, in name of relief, any sum exceeding the total amount of the feu-duty paid or payable by the defenders to the pursuers for that year, in terms of the said feu-contracts."

The questions at issue arose out of certain feu-contracts between Sir Benjamin Dunbar, Sir George's father, and the Fisheries Society. By the first of these contracts, dated 11th March 1803, Sir Benjamin, in consideration of the feu-duty therein specified, feued to the Society—"All and Whole that space of ground lying immediately on the south side of the Water of Wick and county of Caithness," therein particularly described, together with a right of moss near the Loch of Hempriggs, "with liberty also to the said Society of quarrying stones, slate, and flag-stones off the land thereby feued, for the purpose of building on any part thereof, and for erecting piers and forming a harbour thereon, and of defending the same with a pier on the opposite side of the Water of Wick," &c.; and, *inter alia*, with liberty to bring the burn of Hempriggs to their grounds for the purpose of supplying any village