

which puts him out of the entail, and therefore out of the field. I entirely concur in the judgment of the Lord Ordinary and in it being affirmed as proposed by your Lordships.

The LORD JUSTICE-CLERK and LORD ORMDALE were absent.

The Court adhered, and remitted the cause to the Lord Ordinary to proceed further therein.

Counsel for Reclaimers—Keir—Kirkpatrick. Agents—Dalgleish & Bell, W.S.

Counsel for Respondents—Mackintosh. Agents—T. & R. B. Ranken, W.S.

Wednesday, July 14.

FIRST DIVISION.

GUTHRIE AND OTHERS, PETITIONERS.

Process—Case Remitted by Court in England—Order of English Court—22 and 23 Vict. c. 63, sec. 1.

The Act 22 and 23 Vict. c. 63, sec. 1, enacted that "If in any action depending in any Court within Her Majesty's dominions, it shall be the opinion of such Court that it is necessary or expedient for the proper disposal of such action to ascertain the law applicable to the facts of the case as administered in any other part of Her Majesty's dominions on any point on which the law of such other part of Her Majesty's dominions is different from that in which the Court is situate, it shall be competent to the Court in which such action may depend to direct a case to be prepared setting forth the facts, . . . and upon such case being approved of by such Court or a Judge thereof, they shall settle the questions of law arising out of the same on which they desire to have the opinion of another Court, and shall pronounce an order remitting the same, together with the case, to the Court in such other part of Her Majesty's dominions, being one of the Superior Courts thereof, whose opinion is desired upon the law administered by them as applicable to the facts set forth in such case, and desiring them to pronounce their opinion on the questions submitted to them in the terms of the Act." An order pronounced by Mr Justice Fry in a case depending before him in the Chancery Division of the High Court of Justice in England was in these terms:—"And it is ordered that a case be settled before the Judge in Chambers for the opinion of the Court of Session in Scotland as to whether the heritable bond for £19,000, of which it is admitted that the testator was possessed at his death, was included in and passed by the deed-poll dated the 1st May 1872, in the bill referred to, or whether the said sum of £19,000 when paid off formed part of the testator's personal estate." The case as settled was authenticated by the chief-clerk of the English Court, but there was no order by Mr Justice Fry remitting the case to the Court of Session and desiring the opinion of that

Court. Held that until such an order was pronounced the Court of Session could not consider the case.

Counsel for Petitioners—Jameson. Agents—Cowan & Dalmahoy, W.S.

Thursday, July 15.

SECOND DIVISION.

[Lord Rutherford-Clark, Ordinary.

MOIR'S TRUSTEES v. M'EWAN.

Property—Feu-Contract—Alterations in Buildings—Use.

The superiors in a feu-contract took the vassal bound to erect on the ground feued out to him, and thereafter to maintain, two detached villas of a certain size and value, according to plans to be submitted for their approval. Soon after the defender removed the interior stair and built an outside stair at the back of the house to form a communication to the dwelling-house above, thus converting the structure into two flats for the accommodation of two separate families. In an action raised against him to have the house restored to its original condition—held (rev. Lord Ordinary) that under the feu-contract the structure was unobjectionable, and that the use proposed to be made of it was no violation of any restriction in the feu-contract.

The pursuers in this action were the accepting and acting trustees of the deceased John M'Arthur Moir, Esquire of Milton, Argyll, under a trust-disposition and deed of settlement executed by him dated the 31st January 1872. The defender was John M'Ewan, stevedore, Broomielaw, Glasgow.

By feu-charter dated 31st March 1877, and duly recorded in the General Register of Sasines, the pursuers feued to the defender a certain piece of ground on the Gallowhill, Dunoon, being part of the lands and estate of Milton belonging to the pursuers. The defender was taken bound to pay the superiors £13, 17s. 8d. of yearly feu-duty, and his entry was declared to be at the term of Whitsunday 1877. The defender held and possessed these subjects under the reservations, restrictions, conditions, provisions, and declarations of the feu-charter, and, *inter alia*, it was thereby provided—"First, that the said dis-ponee and his foresaids shall be bound and obliged, within twelve months from the date of these presents, to erect, and thereafter uphold and maintain, upon the piece of ground hereby dis-posed, two detached dwelling-houses or villas, fronting Royal Crescent, with suitable offices, of stone and lime, and covered with blue slates, and which shall for the actual erection cost at least the sum of one thousand two hundred pounds sterling each, and forthwith to enclose the said ground with suitable and sufficient fences, and to uphold and maintain the said dwelling-houses and offices and fences in good and complete repair in all time coming; which dwelling-houses or villas shall be built at least sixty feet back from the line of Royal Crescent, and at least five feet