

The other question is, whether, if the appellant be within the descriptions of persons to whom the clause applies, the offence in question has been committed—were these traps placed in situations “other than rabbit-holes?” I do not doubt that they were. I understood a rabbit-hole to signify a burrow such as the rabbit uses for habitation, and not to include casual scrapings made by the animal, not under ground, but open and exposed, for the purpose of avoiding or getting under a physical obstacle. No other meaning would make the provision intelligible. The spring-traps are to be placed in these positions, because there, and there only, they do not endanger other animals, such as winged game and dogs. If the places usually known as rabbit scrapes or rabbit-runs are included in the term “rabbit-holes,” I can imagine no object which the provision was intended to effect.

I substantially agree with the view expressed by the Lord President in the recent case of *Brown v. Thomson*, in the First Division, as to the policy which this clause was intended to promote. The case was much stronger than the present, for there the traps were within sixteen inches of the mouth of the rabbit-burrow; but it was held that they were not in the rabbit-hole, that is, under its roof, but outside, in the rabbit-scrape. Here there was nothing but a gangway perforated under the wire of the fence, to enable the animal to pass under it; and if such a position were legal, the spring-traps might as well be set in the open. One matter referred to in that case was this, how far these traps would or would not be legal in the open at common law. I do not think it necessary to say anything upon that matter. Those are my views, and on the whole case I concur in the views of Lord Craighill and Lord Adam.

The Court found that the defender, in the exercise of his right of killing rabbits, had set traps in places which were not rabbit-holes, and in so doing had acted contrary to sec. 6 of the Ground Game Act; therefore dismissed the appeal and affirmed the judgment of the Sheriff.

Counsel for Appellant—R. Johnstone—Rhind.
Agent—John Macpherson, W.S.

Counsel for Respondent—J. P. B. Robertson—
Graham Murray. Agents—Mackenzie & Black,
W.S.

Friday, December 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

THE WILLIAMS RAILWAY PATENTS COMPANY (LIMITED) AND THOMSON v. PATERSON AND ALLEY & MACLELLAN.

Property—Implied Contract—Conterminous Proprietors—Mutuality.

A, the proprietor of building land lying between the Aitkenhead and Polmadie Roads, near Glasgow, disposed one lot to B, and another to C, in consideration of ground annuals, these lots being described as bounded on the north by the centre line of a “proposed new street to be called Steven Street,”

which if formed would connect the above two roads. Both contracts contained a clause providing that the proposed new street should remain open and unbuilt upon to a certain width, and that the disponees should pay to A the expense of forming and maintaining one-half of the street opposite their lots.

A subsequently disposed, also in consideration of a ground annual, another and adjoining lot to D, whose contract contained a clause by which he agreed to A forming or dispensing with forming the proposed street, but was taken bound to relieve A of all expense in connection with it.

In all these contracts there was a clause by which A was declared entitled at any time at his own discretion to discharge or modify in favour of the disponee all or any of the conditions or obligations contained in the contract, without consent of any other disponees from him, the contract being only intended to regulate the terms of the agreement between himself and the other party to it.

In an action at the instance of B and C against A and D, to have them ordained to form Steven Street, or to obtain a warrant to make the street at their expense, held that by the terms of the contracts there was no obligation on A or D to make the street.

In February 1877 a contract of ground annual was entered into between John Paterson, brick-maker, Glasgow, of the first part, and John Whyte, engineer, Glasgow, of the second part, by which the first party disposed to the second party a plot of ground lying between the Aitkenhead and Polmadie Roads, in the neighbourhood of Glasgow, extending to about 4876 square yards, “bounded on the north by east by the centre line of a proposed street to measure 60 feet in width from building line to building line, along which it extends 243 feet or thereby; on the east by south by unfeued ground belonging to the said John Paterson, along which it extends 209 feet or thereby; on the south by west by the centre line of a proposed street to measure 60 feet in width from building line to building line, along which it extends 177 feet or thereby, and on the west by north by the present east side of the said road leading from Glasgow to Aitkenhead, which is to be widened to 60 feet in width, from building line to building line, along which it extends 219 feet 6 inches or thereby.”

It was stipulated in the contract in the sixth place that “the said two proposed streets and the said Aitkenhead Road to its increased width, when respectively formed, shall remain open and unbuilt upon of the width of 60 feet each in all time coming, for the use of the parties hereto, and the other disponees and assignees of the first party, and also the feuars and disponees” of the Misses Elizabeth Steven and Grace Steven of Bellahouston and their successors, from whom Paterson had feued the ground. Then followed certain stipulations as to the burden of making and keeping up the street, which were precisely similar to these quoted *infra* in the opinion of the Lord President, and contained in the contract with Paterson immediately to be mentioned.

There was also an obligation on the second party to relieve the first party of the expense of making and keeping up the said two proposed streets and Aitkenhead Road.

The *thirteenth* article was as follows:—"The first party and his foresaids shall be entitled at any time at their own discretion to discharge or modify in favour of the second party or his foresaids all or any of the said real liens, burdens, conditions, provisions, restrictions, limitations, declarations, obligations, and others without consent of any other disponees of any lands belonging to them, these presents being intended only to regulate and express the terms of the contract between the parties hereto."

In December 1878 a second contract of ground annual was entered into between Paterson, of the first part, and Alexander Thomson, brickmaker, Glasgow, of the second part, by which the first party disposed to the second party another plot of ground lying between the Aitkenhead and Polmadie Roads, extending to about 1424 square yards, "bounded on the north by east, in the first place, by the centre line of a proposed new street to be called Steven Street, to measure 60 feet in width from building line to building line, along which it extends 114 feet or thereby, and in the second place by other parts of the first party's lands, along which it extends 10 feet or thereby; on the east by south by other parts of the first party's lands, along which it extends in the first place 70 feet or thereby, and in the second place 75 feet 6 inches or thereby; on the south by west by the property of William Smith Dixon of Govanhill, along which it extends 95 feet 6 inches or thereby; and on the west by north by the road leading from Glasgow to Aitkenhead, along which it extends 118 feet or thereby." There were in this contract the stipulations and conditions quoted above as being in the contract with Whyte.

In October 1879 a third contract of ground annual was entered into between Paterson, of the first part, and Alley & M'Lellan, engineers, Glasgow, of the second part, by which the first party disposed to the second party another plot of ground between the Aitkenhead and Polmadie Roads, extending to 8748 square yards, "bounded on the west by north partly by ground feued by the first party to Thomas Howat, dairyman, Polmadie, along which it extends 159 feet or thereby measuring to the centre of Steven Street, partly by ground feued by the first party to John Whyte, engineer, along which it extends 105 feet 6 inches or thereby measuring to the centre of said street, and partly by ground belonging to the first party, along which it extends 8 feet or thereby; on the south by west by the property of William Smith Dixon, Esq. of Govanhill, along which it extends 233 feet or thereby; on the east by south by the centre line of Polmadie Road, to measure 60 feet in width from building line to building line, along which it extends 346 feet or thereby; and on the north by west partly by the said ground feued to the said John Whyte, along which it extends 17 feet 3 inches or thereby, partly by ground feued, or about to be feued, to James Bennie, engineer, Glasgow, along which it extends 150 feet or thereby, and partly by ground belonging to the first party, along which it extends in the first place 65 feet or thereby, and in the second place 66 feet or thereby." The reservations contained in article thirteenth of Whyte's contract, quoted above, were inserted into this contract, but instead of article sixth of Whyte's contract, quoted above, there was the

following:—"The first party, for all interest competent to him, agrees to the second party and their foresaids forming and continuing the said street (Steven Street) until the same shall form a junction with Polmadie Road, or dispensing with forming the same, and to their building upon or otherwise occupying the part of the ground hereby disposed on which the continuation of the said street would fall to be made, as they may prefer. But it is hereby specially provided and declared that should it be found at any time hereafter that the other proprietors in Steven Street, or any of them, or any other party having an interest, are entitled to insist upon said Steven Street being opened up and continued to Polmadie Road, and of their insisting in the said street being so opened up and continued, then the second party and their foresaids shall be bound forthwith to form and thereafter to maintain that continuation of street of the width of 60 feet, with pavements and street lamps, upon the level, and in every respect uniform with the portion of said street already formed; and further, the second party bind themselves and their foresaids to free and relieve the first party and his foresaids of and from all questions and disputes that may arise regarding the keeping closed or opening up, forming, and maintaining said continuation of Steven Street, at the instance of the other proprietors in Steven Street, or others having an interest as aforesaid, and all expenses that he and they may incur in relation thereto."

In October 1879 the Williams Railway Patents Company (Limited) acquired the ground conveyed to Whyte by Paterson.

Paterson had also disposed to Thomas Howat another small plot of ground, referred to in the contract with Alley & M'Lellan as above quoted, and the northern boundary of which was also the centre of the proposed Steven Street, the disponee being taken bound to relieve him of all expense in connection with the street.

This was an action in the Sheriff Court of Lanarkshire at Glasgow at the instance of the Williams Railway Patents Company (Limited) and Thomson, the second party to the second contract above referred to, against Paterson and Alley & M'Lellan, seeking to have the defenders ordained, jointly and severally, "to form a street or part of a street called Steven Street, of the width of 60 feet, in a line with and similar to that portion of said street already formed," through the defenders' ground, or otherwise to obtain a warrant whereby the pursuers should be found entitled to form said portion of said street at the defenders' expense.

Both defenders pleaded that the action was irrelevant, and that being under no obligation to open up and continue Steven Street they were entitled to absolvitor.

On 29th December 1880 the Sheriff-Substitute (GUTHRIE) pronounced the following interlocutor: "Finds that upon a sound construction of the contracts between the pursuers and the defender Paterson it was contracted and agreed that the then proposed street, now called Steven Street, should be formed by the defender Paterson or his successors or disponees so as to extend at least from Aitkenhead Road to Polmadie Road aforesaid, and that when, within or after a reasonable time, the ground intervening between the pursuers' lots and Polmadie Road

should be feued or conveyed under contracts of ground annual or otherwise: Finds that the said ground has now been so conveyed by the defender Paterson to the pursuers, and that the said defenders have not stated any sufficient defence to the petition: Therefore ordains the defenders, jointly and severally, within nine months from the date hereof, to form a street as craved in the first conclusion, at the sight and to the satisfaction of Mr John White, Assistant Master of Works to the City of Glasgow," &c.

On 3d August 1881 the Sheriff (CLARK) adhered, and on 7th June 1882, in respect that the defenders had failed to obtemper the order of 29th December 1880, granted warrant to the pursuers to form the street. Against this interlocutor Alley & Maclellan appealed to the Court of Session. In the meantime Alley & Maclellan had acquired the plot of ground belonging to the Railway Patents Company, who therefore lodged a minute withdrawing from the case.

At the debate Paterson was represented by counsel, and it was conceded by Alley & Maclellan that as Paterson was entitled to be relieved by them of any expense in connection with the road, the question really was whether Paterson had come under any obligation to Thomson. It was argued for both that there was no obligation, express or implied, in the deeds; that the obligation contained in the deeds was too vague to be enforced—*Lord Clinton v. Brown*, July 10, 1874, 1 R. 1137; *M'Ritchie's Trustees v. Hislop*, December 17, 1879, 7 R. 384—*rev.* 8 R. (H. of L.) 95; *Trustees of New St Mark's Church v. Taylor's Trustees, &c.*, January 26, 1869, 7 Macph. 415; *Dennistoun v. Thomson*, 1872, 11 Macph. 121; *Crawford v. Field*, 1874, 2 R. 20; *Glasgow Jute Co. v. Carrick*, 1869, 8 Macph. 93.

At advising—

LOLD PRESIDENT—In this case it appears that Paterson, the defender, bought some 10 or 12 acres of ground lying between the Aitkenhead and Polmadie Roads, near Glasgow, from the Misses Steven of Bellabouston and Polmadie, and that he intended to sell these off in different lots for building purposes. In pursuance of this general intention he made conveyances to Whyte, then to the pursuer Thomson, then to Howat, and finally to the defenders Alley & Maclellan. These were not feu-dispositions or feu-contracts, but sales out-and-out, containing obligations for payment of a ground annual, which however make no difference; they were just conveyances on sale. The first disposition in point of time was to Whyte, who was represented by the pursuers the Williams Railway Patents Company, who have retired from this action, and as regards them the appeal has been sustained and the action dismissed. I do not know that this interferes with the merits of the case, which is just in the same position as if they were here maintaining along with Thomson that this street called Steven Street should be formed and made to go through Alley & Maclellan's feu, and along Whyte and Thomson's feus, so as to connect the Aitkenhead with the Polmadie Road. The Sheriff-Substitute has found that Mr Paterson has come under an obligation in the contracts with Whyte and Thomson that this should be done, and accordingly has directed it to be done, and decerned against Paterson and Alley &

Maclellan. It is difficult to see how decree could go against Alley & Maclellan, who are not said to be under any obligation to the pursuer, the only person possibly under obligation being Paterson. But since it has been conceded that if there is an obligation upon Paterson, Alley & Maclellan would be bound to relieve him, it probably does not in substance matter whether decree goes out against the two jointly and severally, or against Paterson alone, as the result will be the same in either case. The important question is, whether the obligation was constituted?

The contention of the pursuer is that by the contracts with Whyte and Thomson there was created an implied obligation by which Paterson was bound to have the street formed the whole way between the two roads, and therefore to take the disponees in the intervening feus bound to concur in furnishing the ground and making the road. Now, the dispositions to these lots were, the first to Whyte, and the second to Thomson, and as they are substantially in the same terms it is not necessary to read more than one. The disposition to Mr Thomson conveys "All and Whole that plot of ground lying within the parish of Govan and county of Renfrew, containing 1424 square yards or thereby imperial standard measure, bounded on the north by east, in the first place, by the centre line of a proposed new street to be called Steven Street, to measure 60 feet in width from building line to building line, along which it extends 114 feet or thereby;" and this is the first reference in the disposition to the proposed street. But afterwards there is a provision to this effect:—"Fifth, The said proposed new street and the said Aitkenhead Road to its increased width, when respectively formed, shall remain open and unbuilt upon of the width of 60 feet each, in all time coming, for the use of the parties hereto and the other disponees of the first party, and also the feuars and disponees of the said Misses Elizabeth and Grace Steven, and their successors; and the second party and his foresaids shall be bound and obliged to pay to the first party or his successors the whole expense incurred or to be incurred by him in forming and causewaying one-half of the said proposed street and Aitkenhead Road to the centre line thereof, so far as fronting or opposite the plot of ground hereby disposed, including the kerbstones, and one-half of the expense of forming covered drains and common sewers therein, as the amount of such expense shall be ascertained by the first party's contractor or surveyor, whose certificate shall be binding on the second party and his foresaids, and shall not be challengeable by him or them on any ground whatever; and the second party and his foresaids shall be bound and obliged to uphold and maintain in good repair in all time coming one-half of the said proposed street and the said road to the centre line of the same respectively, so far as opposite the plot of ground hereby disposed, and that in so far as the trustees of the said road do not do so: Sixth, The second party and his foresaids shall be bound and obliged to form and make, and in all time coming to maintain and uphold in good repair, opposite the building to be erected by them as aforesaid having a frontage to the said proposed street and the said Aitkenhead Road, flagstones or asphalt pathways (but if the latter, on the condition that whenever required by the first

party or his foresaids the said second party and his foresaids shall replace the same by flagstone pavements) of the breadth of 12 feet, including the kerbstone." And then follows an obligation on the second party, that is, Thomson, to erect lamp-posts and so forth. In this clause the street is spoken of in the same terms as in the description of the lands—as a proposed street—and the obligation with regard to maintaining it is that when formed it shall be kept open and unbuilt upon; and there is also an obligation on the second party to pay the expense of forming and keeping up part of the proposed street, that is to say, to pay the first party for the portion of the street opposite the disponee's property. It is necessary, however, to take into consideration another and a very important clause in the pursuers' disposition, viz., the twelfth—"The first party and his foresaids shall be entitled, at any time in their own discretion, to discharge or modify in favour of the second party or his foresaids all or any of the said real liens, burdens, conditions, provisions, restrictions, limitations, declarations, obligations, and others, without consent of any other disponees of any lands belonging to them, these presents being intended only to regulate and express the terms of the contract between the parties hereto."

Now, there was a similar clause in the original disposition to Whyte, who is now represented by the Railway Patents Company, and it is therefore quite impossible to maintain that there are here mutual obligations as between the disponees, such as we sometimes find in the case of ground feued out to several vassals who have in their charters corresponding conditions in favour of each, and which are thus sufficient to create a *jus quaesitum* to the co-feuars. The clause I have read excludes the supposition that such was intended, for by it Paterson could dispense with the performance of the obligation, and if Paterson could dispense with the insertion of this obligation in subsequent conveyances, then the other disponees could not enforce it. Mutuality between the disponees being thus out of the case, the argument of the respondent was therefore confined to the question whether by this conveyance to Thomson there was created an implied obligation on Paterson to get the street completed, and for that purpose to take others bound to concur in forming the street, for it is plain that if Paterson was at liberty to give ground to others without that condition there could be no implied obligation on himself. It is hard to see how there could be an implied obligation, when he was not bound to omit this clause by which he reserves power to dispense with the insertion of the obligation in subsequent dispositions. How is it possible to say that he could compel the street to be made? Then, before Thomson obtained his disposition Paterson had given one to Whyte without the clause containing the obligation. Paterson just reserved power to make a street, or to dispense with it in whole or part. Then if that be the meaning of the clause, how is it possible to spell out an implied obligation to make the street; for if an implied obligation on Paterson, the seller, cannot be made out of this conveyance, there is an end of the pursuers' case. I think there is no ground for holding that there is an implied obligation, and therefore I cannot agree with the Sheriff. Alley &

M'Lellan come into this case because Paterson had power to continue or dispense with the continuation of the street as he chose, but in case Thomson should be found to have a claim against him, then Alley & M'Lellan should be bound to relieve him. That however does not affect the question your Lordships have to decide here, which is one between the pursuer and Paterson. I am of opinion that the defender should be assoilzied.

LORD DEAS concurred.

LORD MURE—I am of the same opinion. The demand rests on an alleged obligation on Paterson in Thomson's favour to form a street; there was no express obligation on Paterson to do anything, but if any, it was only implied, and I do not think that this can be made out. It is hard to infer any implied obligation from the deed, and taking the clause to which your Lordship has referred as a form which the disposer had selected for different disponees, it is clear that whenever there was a ground annual in the same position with regard to Paterson as this the existence of this clause would exclude the possibility of any implied obligation. I think that Paterson kept the matter in his own hands, and that there was no obligation on him to form that street.

LORD SHAND—I agree that the interlocutor of the Sheriff-Substitute must be recalled, and the defenders assoilzied from the conclusions of the action, but I do not rest my judgment so much on the twelfth clause of the contract of ground annual between Paterson and Thomson entered into in December 1878, a year after the contract with Whyte had been entered into. By clause 12 of that disposition as between Thomson and Paterson, the granters of the deed, there is no doubt that Paterson reserved power to discharge the obligation to form this street, and that he intended the deed only to express and regulate the intention of parties. As I understood the argument, it came to this, that having granted a deed in such terms to Thomson, Paterson would not be entitled to insert the clause of reservation in subsequent dispositions. For the respondents it was argued that by another clause Paterson became bound that the road in contemplation should be made, and that it was inconsistent therewith that in any new disposition he should insert a clause by which the granter would be entitled to disregard this obligation. While not attaching so much importance to clause 12 as your Lordships, I think the respondent fails when he says that in other parts of the deed there is an obligation on Paterson. The whole question turns on clause 5, which declares that the said proposed new street and the said Aitkenhead Road to its increased width, when respectively formed, shall remain open and unbuilt upon of the width of sixty feet each in all time coming, for the use of the parties hereto, and the other disponees of the first party, and also the feuars and disponees of the said Misses Elizabeth and Grace Steven and their successors. While that is so, the obligation relates entirely to ground conveyed by that deed, and no part of the deed relates to ground beyond that, so that the granter undertakes no express obligation with

regard to the rest of the ground. The respondent therefore has to rear up an implied obligation, and I do not say that such an obligation cannot be reared up, for we have an illustration of such a case in *Dennistoun v. Thomson*, which was cited, but it requires clear grounds of implication, and there it was held there was an implied obligation, because the road was not only formed in part, but there was an interval left, and the Court in the circumstances and from the terms of an agreement held that the defender had bound himself to complete the road. In this case, as it was here put by the counsel for the appellants, when is the obligation to be prestable? What if the ground is not sold, or if a building is put up to cover the entire space, would the defender be bound then to make the road? There is nothing in the deed to enable me to say that he would. The only difficulty I have had, and that is not a serious one, has arisen from a curious provision that the road should remain open not only for Paterson's disponees but also for the disponees of the Misses Steven; but that is explained by the fact that there is another road, the Aitkenhead Road, which the disponees are also bound to keep open to the increased width, and that would be of advantage to the Misses Steven. It was in the view of the parties that the seller might open up the street, and he therefore took the appellants bound to pay for that portion of it *ex adverso* of his ground, but the seller kept it entirely in his own hand to make the road or not as he pleased, and there is no obligation, express or implied, in his conveyance to Thomson sufficient to compel him to do so.

LORD DEAS—I do not doubt there can be an implied obligation, only I understand that there is nothing here sufficient to raise such an implication.

LORD PRESIDENT—That is certainly my opinion also.

The Court sustained the appeal and assolizied the defenders.

Counsel for Appellants Alley & M'Lellan—Mackintosh—Pearson. Agents—Dove & Lockhart, S.S.C.

Counsel for Appellant John Paterson—Jameson. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Respondents—Dickson. Agents—J. & J. Ross, W.S.

HIGH COURT OF JUSTICIARY.

Saturday, December 23.

(Before Lord Young, Lord Craighill, and Lord Adam.)

[Sheriff of Ayrshire.

M'LEAN v. MURDOCH (P.-F. OF AYRSHIRE AT AYR).

Justiciary Cases—Statute 5 Geo. IV. cap. 83, sec. 4—Statute 34 and 35 Vict. cap. 112 (Prevention of Crimes Act 1871), sec. 15—“Collecting Alms under a False and Fraudulent Pretence.”

Held that by section 15 of the Prevention of Crimes Act 1871 the whole of section 4 of the Act 5 Geo. IV. c. 83, is applied to Scotland, and therefore that a charge of contravention of section 4 of the Act of Geo. IV., as amended and altered to Scotland by the Prevention of Crimes Act 1871, by “going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions under a false and fraudulent pretence,” was a relevant charge.

The Act 5 Geo. IV. c. 83 (1824), entitled “An Act for the Punishment of Idle and Disorderly Persons and Rogues and Vagabonds in that part of Great Britain called England” (and which is expressly declared not to extend to Scotland), by section 4 provided that every person guilty of any one of thirteen offences therein specified should be deemed a rogue and vagabond within the true intent and meaning of the Act, and should on conviction be liable to imprisonment with hard labour. Of these thirteen different offences one is thus described in the Act:—“Every person going about as a gatherer and collector of alms, or endeavouring to procure charitable contributions of any nature or kind under any false or fraudulent pretence.” The first in order of the thirteen is an offence of committing any of certain offences created by previous sections “after having been convicted as an idle and disorderly person,” while the last in order is the offence committed by one who is “apprehended as an idle and disorderly person, and violently resists the constable or other peace officer so apprehending him,” and is subsequently convicted of the offence for which he has been so apprehended. Another of the offences enumerated in the section is described as follows:—“Every suspected person or reputed thief frequenting any canal, river, or navigable stream, dock or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.”

Doubts having arisen as to the construction of the words creating this last-named offence, the Prevention of Crimes Act 1871 (34 and 35 Vict. c. 112), sec. 15, after narrating the provisions just quoted, provides—“And whereas doubts are entertained as to the construction of the said provision, and as to the nature of the evidence required to prove the intent to commit a felony, Be it enacted, firstly, the said section shall be construed as if instead of the words ‘highway or place adjacent’ there were inserted the words ‘or any highway or any place adjacent to a street or highway;’ and secondly, that in proving the intent to commit a felony it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent; and he may be convicted if from the circumstances of the case, and from his known character as proved to the Justice of the Peace or Court before whom or which he is brought, it appears to such Justice or Court that his intent was to commit a felony; and the provisions of the said section, as amended by this section, shall be in force in Scotland and Ireland.”

Edward M'Lean was charged in the Sheriff Court of Ayrshire, under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, with