perform that service, namely, to go to the West Coast of Africa and back again. But as the owner would only be liable under the clause in an action for damages, the parties very wisely chose to measure their damages, and accordingly the measure is that the hire is to cease on the contingency of there being "a loss of time from a deficiency of men or stores, breakdown of machinery, want of repairs, or damage, whereby the working of the vessel is stopped for more than forty-eight consecutive working hours, until she be again in a fit state to resume her service." I say that I read for "efficient" "fit" only. What service? She was to be a vessel which was fit to go on certain voyages described in the concluding portion of the clause. Now, was she that? On the portion of the voyage from Las Palmas to Harburg she was clearly unable to do it. When was the moment that she again became fit? Nothing was done to her to make her fit on the first day of the discharge. When did the period begin at which she was again fit for the performance of "that service," namely, the service between these ports? I say, only upon the day when she was put by repairs into a state in which she was fit to perform the voyages which she was originally required to perform, and in which state the owner undertook that she should be during the whole period.

For these reasons, my Lords, I of course concur with the judgment of the Lord Chancellor and of my two noble and learned friends opposite with regard to the portion of the voyage from Las Palmas to Harburg. But I have also come to the conclusion that the pursuer is not entitled to any portion of the sum which he has claimed. The Court in Scotland appear to have given the sum of £60 in a vague sort of way. I am of opinion that if the pursuer is entitled to anything he is entitled to payment for the entire ten days occupied in the discharging, and that we cannot go into the question of dawdling in the discharge. But I am of opinion that he is entitled to nothing; and therefore I do not agree with the view which has been expressed by the majority of your Lordships that the interlocutor of the Court of Session in Scotland should be amended as proposed.

Their Lordships affirmed with variation the judgment appealed against without costs in their Lordships' House or in the Court below.

Counsel for the Appellants—Finlay, Q.C.—D. C. Leck. Agents—Lowless & Co.

Counsel for the Respondents—J. Gorell Barnes, Q.C.—F. W. Hollams. Agents—Hollams, Sons, Coward, & Hawksley.

COURT OF SESSION.

Saturday, January 17, 1891.

OUTER HOUSE.

[Lord Stormonth Darling.

ORR *v.* SMITH.

Process—Expenses—Approval of Auditor's Report—Tender—Extract.

An unsuccessful complainer in a note of suspension and interdict against the erection of a boundary wall tendered the taxed amount of expenses under deduction of the expense of approval and decree and of extracting the interlocutor. The Lord Ordinary *found* that the respondent was entitled to an extract at the complainer's expense, and that the tender was insufficient, and he accordingly approved and decerned in the ordinary form for the taxed amount.

Complainer's authorities — *Allan* v. *Allan's Trustees*, 13 D. 1270; *Magistrates of Leith* v. *Gibb*, 19 S.L.R. 399; *Bannatyne* v. *M'Lean*, 21 S.L.R. 479.

Respondent's authorities—*Hunter* v. *Stewart*, 20 D. 60; *Scott* v. *North British Railway Company*, 22 D. 922.

Counsel for the Complainer—G. W. Burnet. Agent—F. J. Martin, W.S.

Counsel for the Respondent—C. N. Johnston. Agents—Thomson, Dickson, & Shaw, W.S.

Thursday, March 19.

FIRST DIVISION.

[Lord Low, Ordinary.

ABDY AND ANOTHER (RELIANCE MUTUAL LIFE ASSURANCE SOCIETY TRUSTEES), AND OTHERS *v.* BRINGLOE (HALKETTS' JUDICIAL FACTOR) AND OTHERS.

(*Ante*, vol. xxvii., p. 551.)

Husband and Wife—Marriage-Contract—Income of Trust-Estate—Assignation of by Wife.

By antenuptial marriage-contract a wife conveyed to trustees her *acquisita* and *acquirenda* with a direction to pay to herself the free annual income of the trust-estate during the subsistence of the marriage, such payment being made exclusive of the *jus mariti* and right of administration of her husband, her own receipt being a sufficient discharge to the trustees.

In security of certain funds borrowed by the husband, the spouses granted a bond and assignation in which the wife, with the special advice and consent of her husband, assigned to defender her whole right and interest under the marriage-contract, including the capital, and income payable to her thereunder.

Held that under the marriage-contract the wife had an absolute title to the annual income of the trust-estate, and that she had effectually assigned it to her husband's creditors by the bond and assignation in security.

Colonel Frederick John Colin Halkett and his wife Mrs Helen Margaret Fisher or Halkett were married in 1857. By antenuptial marriage-contract dated 26th January 1857, Mrs Halkett conveyed to trustees the whole estate then belonging to her, or which she might acquire during the subsistence of the marriage. The second purpose of the trust was thus expressed—"for payment of the free annual interest or produce of the trust-funds and estate to the said Helen Margaret Fisher during the subsistence of the marriage, such payment being exclusive of the *jus mariti* and right of administration of the said Frederick John Colin Halkett, and her own receipt being a sufficient discharge to the said trustees."

In October 1889 Colonel Halkett borrowed from the Reliance Mutual Life Assurance Society the sum of £1500, and he and his wife granted therefor a bond and assignation in security dated 1st October, in which he bound himself, his heirs and executors, and representatives whomsoever, to repay the said sum with interest at five per cent. until repayment.

In security of her personal obligation, Mrs Halkett, with the special advice and consent of her husband, assigned to the pursuers her whole right and interest, present and future, in, under, and in virtue of the marriage-contract, and in particular, and without prejudice to the said generality, in and to the whole sums of money, as well capital as income, which were or might become payable to her under the contract.

On 3rd October 1889 this bond and assignation was duly intimated to Joseph Campbell Penney, the judicial factor who was then acting on the estate which had fallen under the marriage-contract. In December 1889 Colonel Halkett was adjudicated a bankrupt in England.

In January 1891 John Thomas Abdy and Thomas Eykin, the trustees for the Reliance Mutual Life Assurance Society, raised the present action of declarator against Francis Adam Bringloe, the judicial factor on the said marriage-contract trust-estate of Colonel and Mrs Halkett, and concluding (1) for declarator that they had acquired right as and from the 3rd October 1889 to the capital and income payable to the spouses or either of them under the contract of marriage; (2) for an account by Bringloe showing the balance due by the estate to the pursuers as in right of the defenders under the bond; (3) for payment of £600 as such balance; (4) for an annual payment of the free interest of the estate.

The defender Mrs Halkett averred that on 17th September 1889 she was induced by her husband gratuitously and without consideration to sign the said bond and assignation in security, and she further alleged that no right to the free annual proceeds of the trust funds was ever transferred to or vested in the pursuers.

She also averred that the pursuers accepted the security in full knowledge of the terms of the marriage-contract, and that she in signing the bond did so under her husband's influence.

The pursuers pleaded, *inter alia*—"(1) The interests of the defenders Frederick John Colin Halkett and Mrs Helen Margaret Fisher or Halkett under the marriage-contract having been validly transferred to and vested in the pursuers, decree should be granted as craved."

The defenders pleaded, *inter alia*—"(2) The estate of the defender Mrs Halkett having been conveyed to trustees for her protection, in terms of the antenuptial marriage-contract referred to, she could not validly and effectually convey away the same *stante matrimonio* to her own prejudice; and *separatim*, she could not do so in security of her husband's debts. (3) The defender F. A. Bringloe, as representing the trustees under said marriage-contract, is not entitled to act upon said bond and assignation in security and intimation thereof."

On 5th February 1891 the Lord Ordinary (Low) sustained the second and third pleas-in-law for the defenders, assoilzied the defender Bringloe from the petitory conclusions, and dismissed the action.

"*Opinion*.—[*After narrating the facts*]—It was explained that the question which the pursuers wished to have determined in the present action is their right, as Mrs Halkett's assignees, to the income of the trust-estate during the subsistence of the marriage. This was the only question argued before me.

"It was contended for the defenders that the provision in the second purpose of the trust, that the income of the trust-estate should be paid to Mrs Halkett during the subsistence of the marriage, was a proper contract provision which she had no power either to renounce or abandon or assign while the marriage subsisted.

"The pursuers, on the other hand, contended that the income of the trust funds constitutes separate estate of the wife, with which she can deal in any way she chooses.

"There are three classes of cases in which the rights of a wife under an antenuptial marriage-contract have been defined by the Court.

"(1) If the wife's provision is not secured by a trust, she can deal with it as she pleases. For example, if she is infeft in a liferent of her husband's heritage, she can renounce or assign the liferent—*Standard Property Investment Company* v. *Cowe*, 4 R. 695. It is clear that the present case does not fall under this category.

"(2) The mere fact of a wife having conveyed her portion to trustees under an antenuptial contract of marriage does not divest her of her rights as proprietor unless the trustees are directed to hold and apply it for proper matrimonial purposes—*Ramsay*, 10 Macph. 120; *Laidlaw*, 11 R. 481.

"(3) If, however, the wife's estate is conveyed to trustees for the purpose of settling

and securing marriage-contract provisions, then the wife cannot abandon or renounce or assign the rights intended to be secured to her during the subsistence of the marriage. The trust is, in such a case, regarded as a means (indeed the only means) of protecting the wife's marriage-contract provisions not only against her husband and his creditors, but against herself and her own acts—*Torry Anderson*, 15 S. 1073; *Menzies*, 2 R. 507.

"The question is, whether the present case falls to be determined upon the principles to which effect was given in the second class of cases above referred to, or upon those which were held to govern in the third class. In other words, the question which I have to decide is, whether Mrs Halkett's right to the income of the trust-estate is an absolute unrestricted right, which she can deal with as she likes, the trust being merely the machinery by which the income is conveyed to her, or whether it is not a proper matrimonial provision which is protected by the trust even against her own acts.

"My opinion is in favour of the latter of these views. To pay the income to Mrs Halkett, and to her alone, is one of the purposes for which the conveyance to the trustees is made. It is true that the provision is not declared to be alimentary only. I do not think, however, that this alters the essential character of the provision. Looking to the general scheme of the contract, I am of opinion that the second purpose was intended to secure a separate income to the wife during the subsistence of the marriage, protected by the trust not only against the husband and his creditors, but against the wife herself, and particularly against the risk of her being induced, through love or fear of her husband, to anticipate her right to this income for his benefit, but to her own prejudice.

"The circumstances under which the assignation sued on was granted form a typical example of the kind of case against which the contract was intended to protect the wife. Colonel Halkett, apparently upon the eve of bankruptcy, wished to borrow £1500. He could only do so with his wife's assistance, and she has been induced to assign to the lender the very income which by the marriage-contract was intended to be secured to her. I think that the principles upon which the case of *Menzies* v. *Murray*, and previous cases of that class were decided, are applicable here, and I am therefore of opinion that the pursuers cannot, as Mrs Halkett's assignees, demand that the judicial factor shall account for and pay to them the income of the trust-estate during the subsistence of the marriage.

"The conclusion at which I have arrived is, I think, confirmed by the judgment which was pronounced by the Court last year in regard to the rights of the spouses under this marriage-contract—*Halketts* v. *Halkett's Factor*, 17 R. 719. In that case Mrs Halkett and her husband, with consent of three of their children who had attained majority, asked for declarator that the judicial factor was bound to convey to Mrs Halkett the whole of the trust funds over and above the sum of £5000 secured to the children by the eighth purpose. The Court held that Mrs Halkett was not entitled to make the demand during the subsistence of the marriage.

"The Lord Ordinary in that case—Lord Trayner—referring to the second purpose of the marriage-contract, says—'I regard that clause as not merely a direction for trust management, but a proper contract provision, whereby there was secured to Mrs Halkett, so long as the marriage subsisted, payment of the free proceeds of her estate—a provision intended to protect her against her own acts as well as the acts of others, and one which she cannot now revoke or renounce. The grounds upon which the learned Judges in the decision of the case of *Menzies* v. *Murray* appear to me to have at least equal force and applicability in the present case.'

"The Lord Justice-Clerk concurred with the Lord Ordinary, and although Lord Rutherfurd Clark and Lord Lee doubted the direct applicability of the case of *Menzies* v. *Murray*, it must be remembered that the question before the Court was in regard to Mrs Halkett's right to the capital of the trust funds, and not in regard to her right to assign the income in security and for payment of her husband's debts.

"As I have already said, the only question argued before me was as to the right of the pursuers to demand payment of the income from the judicial factor during the subsistence of the marriage, and therefore it is unnecessary to consider what the position of the parties will be in the event of the marriage being dissolved."

The pursuers reclaimed, and argued—The terms of the marriage-contract vested in Mrs Halkett an indefeasible title to the income of the trust-estate, and by the clause in the bond and assignation she interposed her personal credit as in right of the income of the estate to relieve her husband. She effectually assigned to the Insurance Company the annually accruing interest of her own estate, which she was entitled to do. There was nothing in this case of the nature of a proper matrimonial provision which the trust could protect against her own acts.

Argued for the respondents—Under the terms of the marriage-contract Mrs Halkett was not entitled to alienate the income of the trust-estate. The contract provided for the funds being held, and the trust was the machinery by which this was to be done. So long as Mrs Halkett lived the trust purposes remained unfulfilled. The whole object of this marriage-contract was to protect Mrs Halkett from her husband and his creditors. This bond was a cautionary obligation by Mrs Halkett for behoof of her husband, and was bad at common law—*Biggart* v. *City of Glasgow Bank*, January 15, 1879, 6 R. 470; *Menzies* v. *Murray* March 5, 1875, 2 R. 507.

At advising—

LORD PRESIDENT—I cannot help feeling that it would have been much better under this marriage-contract if the income of the trust funds had been so secured to the wife that she could not have disposed of it in the manner in which she has done under this bond and assignation in security. At the time of her marriage this lady was possessed of some considerable estate, which she dealt with by handing over to the marriage-contract trustees directing them to pay the free annual interest or produce of the trust funds and estate to her during the subsistence of the marriage, such payment being exclusive of the *jus mariti* and right of administration of the said Frederick John Colin Halkett, and her own receipt being a sufficient discharge to the said trustees. It is not necessary to read more of the marriage-contract, which relates to the disposal of the fee. The question really before us depends upon the construction of the words which I have just read, and which deals with the free annual interest of the whole estate during the subsistence of the marriage, the payment of which is made exclusive of the *jus mariti* and right of administration of the said John Halkett, her receipt being a sufficient discharge. Now I think these words are sufficient to vest in Mrs Halkett an indefeasible and complete title to the income derivable from that estate. We have all the authorities going the same way, and we have only to construe what is the application of that document to the circumstances of the present case. What has been done is, that Colonel Halkett having become bankrupt, his wife agreed with him that she should interpose her personal credit, as in right of the income of this estate, for the purpose of relieving his necessities, and that was done in the form of a bond and assignation in security in favour of the Reliance Mutual Insurance Society, in which the husband acknowledges that he has instantly borrowed and received from the persons named—from the society called the Reliance, &c.—the sum of £1500, which he binds himself, his heirs and assignees, to repay with interest, "and I, Mrs Helen Margaret Fisher or Halkett, wife of the said Frederick John Colin Halkett, with consent as after mentioned, do hereby bind myself to the extent of binding my own separate estate and effects, all jointly and severally, to repay the same with interest to the trustees of the said Insurance Company." This is in one sense a cautionary obligation on the part of Mrs Halkett, but in another sense it is something different, because it is an assignation to the Insurance Company, or their trustees, of the interest which she has annually accruing from her own estate, which is held by trustees and is payable to her by trustees, and which is peculiarly her own. In my opinion she is entitled to deal with the annual produce of that estate in any way she pleases, and I do not know of anyone who can interfere to prevent her. I think she might spend it in any way she liked. I think she might alienate it, and I think she might possibly give it away as a free gift. That being so, it is impossible to resist the conclusion that she has an absolute right to the disposal of this annually accruing income.

The conclusions of the summons which has been brought by the Insurance Company, so far as they have been repelled by the Lord Ordinary, are two. The one is to make payment to the pursuer of the sum of £600, as the balance due by the defender Bringloe; and the other, to make payment of the annual income of the estate. The first is a conclusion for payment of outstanding income under the assignation, and I have not yet been able to see any answer made to that demand. The case of *Biggart* v. *City of Glasgow Bank*, 6 R. 470, which was cited is not the case here. There the question was as to how far a lady could hold a share in a company in which she had invested, and there was also a question of how far she could undertake personal obligation not having special reference to or connection with the particular charges. But that is not the point here. The point here is, whether this lady has made an effectual assignation of the income of her estate down to the date of the citation of the present action, and no authority has been cited to show that that was an incompetent proceeding on her part. It seems to me that instead of being a contravention of the marriage-contract, it is precisely in accordance with it. It is carrying out one of the purposes of the marriage-contract, which is to give to her uncontrolled possession of the estate.

The other conclusion of the summons relates to the future, and it is said that that depends upon other considerations, and that the marriage-contract was so framed as to make the subsistence of the wife an actual purpose of the contract. If I could read it in that way I should be very glad to do so, but I see no room for that. On the contrary, it appears to me that the power of the lady under the provisions of the marriage-contract is precisely the same in regard to the disposal of this income, whether during the marriage or after the decease of her husband if he should happen to predecease her—she remains just as much uncontrolled, just as little under control of the trustees in that matter as during the subsistence of the marriage—and therefore, although with some regret, I am bound to express my difference of opinion from the Lord Ordinary and the conclusion at which he has arrived.

LORD ADAM—The difference between this case and *Menzies* v. *Murray's* case and the others appears to me to be this, that in those cases there was an attempt by the defender to get rid of obligations which might have been imposed by the trust itself. They were cases against the trust. This case does not resemble them at all, because it appears to me that the claim now made by Mrs Halkett is directly under and in terms of the trust-deed. The trustees are bound to pay the annual income of the estate during her life—during the subsistence of the marriage—to Mrs

Halkett on her own receipt. Now, supposing this claim were made by Mrs Halkett herself, it would be directly at variance with this obligation of the trustees to pay to her. I do not suppose that she must produce a receipt herself, but it cannot be said that a person having that power has no power to give right to an assignee to appear in her place and make a claim for her. There is no declaration that she shall not be entitled to assign it, or to invest it, or to do with it what she pleases. She is simply dealing with a fund which is her own, and which at every ensuing term as it becomes due becomes her own property. And it appears to me that as the income comes in year by year it becomes Mrs Halkett's. I cannot see where her claim can be sustained.

LORD M'LAREN—I much regret that I am unable to take the view which the Lord Ordinary has taken, because I cannot help observing that Mrs Halkett has been induced to give away the only provision that, so far as we see, would be available to her in her widowhood, without consideration, and influenced apparently by a desire to relieve her husband's immediate necessities. Nevertheless, I am of opinion that in sustaining the conclusions of the action we are giving full effect to the provisions of the marriage-contract trust. I assent to all that the Lord Ordinary has said regarding the favour which the law accords to contracts of marriage, and the power which it gives to women about to enter the married state to put themselves under disability. The reasons for this are obvious, because a husband must always have a large influence in the administration and disposal of his wife's estate—a moral influence—against which it may be proper that the lady should seek to protect herself before she enters into marriage. Now, there are many ways and many degrees of protection. If it is only desired to protect the wife's estate against the husband's creditors or against his voluntary acts, there is no need for a trust in our law, because that is done by excluding the *jus mariti*. But where it is desired to protect the wife against her own improvident acts, then that is accomplished by means of a trust, and the protection given by the law is just that which the parties have sought to give to themselves. In this contract we see that the property and the income are the subject of different trusts. There is a certain power of appropriating part of the capital for provisions to children, and so on; and there is an unqualified power of dealing with the income. If a wife chooses to say in her contract that the income of her estate shall not be assignable, the law will give effect to that provision; nevertheless, the estate would be open to the diligence of her creditors. But, as we know, the more usual mode is to exclude both voluntary assignments and diligence. There is no exclusion in this trust, either in express terms or by the use of the word "alimentary," which according to high authority has a very comprehensive effect. Now, I think it is desirable that persons who are entering into marriage should have the freedom of arranging their own affairs as they please. It may very well be that a lady of fortune who is marrying a man who may be poor but trustworthy and economical, will desire to reserve unlimited power over the income of her estate. Such a power may be very useful by enabling the lady to provide for the advancement of her husband or her sons in their professions. There are other cases where it may be desired to have a more strict form of settlement, containing an exclusion of the wife's power of anticipating her income, and where this is desired the mode of effecting such exclusion is well-known. In this case there is no provision against anticipation, and to endeavour to read into such deeds by implication a different kind of arrangement from that which the parties have thought fit to make would be doing more harm than good, and would be contrary to the principles of construction which have always been recognised in settlements between husband and wife. I am unable in this case to see any difference between the right to assign income during marriage and the right to assign the income after the dissolution of the marriage. It seems to me that the power of dealing with the income as a whole is unlimited. Though Mr Johnston very properly called our attention to the possibility of such a distinction being taken, I am unable to see that it arises in the present case, and my opinion is that the pursuer is entitled to decree of declarator and payment.

LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"The Lords having considered the reclaiming-note for the pursuers against the interlocutor of Lord Low dated 5th February 1891, and heard counsel for the parties, Recal the said interlocutor: Find and declare that the pursuers have acquired right as at and from the 3rd day of October 1889 to the whole income that has or may hereafter become payable to the defenders Frederick John Colin Halkett and Mrs Helen Margaret Fisher or Halkett, or either of them, under the contract of marriage mentioned in the summons, in security of the sums—principal, interest, premiums of insurance, and expenses—due, and that may become due, under a bond and assignation in security granted in favour of the pursuers by the said Frederick John Colin Halkett and Mrs Helen Margaret Fisher or Halkett for the sum of £1500 sterling dated 17th September 1889: Of consent find the sum of £167, 12s. 2d., due by the defender Bringloe to the pursuers as in full of their claims to this date, *quoad* the declaratory conclusion of the summons so far as applicable to the capital sums there mentioned; continue the cause: Decern against the defender Francis A. Bringloe, as judicial factor on the said

marriage-contract estate, to make payment annually from this date to the pursuers, as trustees foresaid, of such sums as the Accountant of Court in the ordinary exercise of his office approves of as one free annual interest or produce of the said marriage-contract estate, due and payable to the said defenders Frederick John Colin Halkett and Mrs Helen Margaret Fisher or Halkett, and that at such dates as the said Accountant shall fix the amount thereof, aye and until the whole sums—principal, interest, premiums of insurance, and expenses—foresaid have been repaid to the pursuers: Find the pursuers entitled to expenses, and allow an account thereof to be given in, and remit the same to the Auditor to tax and to report: Find the defender Francis A. Bringloe entitled to retain the expenses incurred to and by him out of the capital of the trust-estate, and decern."

Counsel for Pursuers—D.-F. Balfour, Q.C.—Jameson. Agents—J. & J. Ross, W.S.

Counsel for Defenders—Johnston—Sym. Agent—R. Stewart, S.S.C.

Thursday, June 26, 1890.

OUTER HOUSE.

[Lord Kyllachy.

RANKINE AND OTHERS *v.* ROLLO AND OTHERS (ROLLO'S TRUSTEES).

Superior and Vassal—Casualty—Entry Taxed in Charter by Progress—Prescription.

In a charter of resignation granted in 1843, the entry of singular successors was taxed at double the feu-duty. In the original charter the entry of singular successors was untaxed. The vassal infeft and entered in 1843 having died, his trustees, who were singular successors, were called upon in 1890 to pay a year's rent as composition. They pleaded possession for the prescriptive period upon the charter of 1843. *Held* that there being disconformity between the original charter and the charter by progress, the former must rule, and that prescription did not apply, there having been no possession inconsistent with the superior's claim.

This was an action at the instance of Walter Lorne Campbell Rankine of Dudhope, in the county of Forfar, John Campbell of Kilberry, and Mrs Rose Elizabeth Maclaine, or Rankine or Maquay, his tutors, and George Robertson, W.S., Edinburgh, their factor and commissioner, against David Rollo, residing at No. 36 Montgomery Street, Edinburgh, and others, the trustees of the deceased David Rollo, writer in Dundee, to have it found and declared that in consequence of the death of David Rollo, writer in Dundee, on 30th March 1880, the vassal last vested and seised in certain lands of which Walter Lorne Campbell Rankine was superior, a casualty of one year's rent became due on 30th March 1880 and was still unpaid, and that the rents of the lands belonged to the pursuers from the date of citation until payment. The lands were originally feued in 1792, by feu-contract dated 7th April 1792, by John Rankine of Dudhope, in favour of Alexander Donaldson, tenant at Milehouse. In that deed the casualty of relief payable at the entry of each heir was fixed at double the yearly feu-duty; but the composition payable at the entry of singular successors was untaxed. All the subsequent transmissions of the said lands were granted with and under the whole reservations, restrictions, provisions, and declarations contained, *inter alia*, in the said feu-contract, and bear expressly to be granted '*salvo jure cujuslibet.*' In none of these transmissions was there any clause of *novodamus*.

In 1841 John Cowper or Cowpar, the vassal then infeft, disponed the lands in favour of David Rollo. The disposition contained the following clause—"In which lands and others above disponed I hereby bind and oblige myself and my foresaids to infeft and seize the said David Rollo and his foresaids upon their own proper charges and expenses, and that by two several infeftments and manners of holding, one thereof to be holden of me and my foresaids in free blench for payment of a penny Scots in name of blench farm at Whitsunday yearly upon the ground of the said lands if asked only, and freeing and relieving us of all feu-duties and other duties and services exigible out of the said lands or others by our immediate lawful superiors thereof, and the other of the said infeftments to be holden from me and my foresaids of and under our said lawful superiors in the same manner that I, my predecessors and authors held, hold, or might have holden the same, and that either by resignation or confirmation, or both, the one without prejudice of the other." David Rollo was infeft upon a charter of resignation by David Rankine, Esquire, of Dudhope, then the superior. The charter bore that the lands were granted in feu for payment "of the sum of £27, 4s. 1½d. sterling yearly, in name of feu-duty, by equal proportions, at the terms of Martinmas and Whitsunday respectively, and doubling the said feu-duty at the entry of each heir and singular successor . . . and these for all other burdens, exactions, demands, or secular services whatever, which can be anywise exacted or required furth of the said subjects in all time coming." The precept of sasine authorised sasine to be given in the lands, "always with and under the whole reservations, restrictions, provisions, and declarations contained in the original rights and titles of the said lands and others," and the precept ended with these words, *salvo jure cujuslibet.*

David Rollo died on 30th March 1880 leaving a trust-disposition and settlement conveying his whole estate to the defenders.