

terlocutors complained of in the appeal, the remit to the Lord Ordinary to hear parties' procurators further, be superseded.

For the Appellants, *Wm. Adam, John Connell, Geo. Cranstoun.*

For the Respondent, *J. H. Mackenzie.*

1819.

THE DUKE OF
ARGYLL, &C.
v.
LAMONT.

The TRUSTEES of the late Duncan Campbell of Glendaruel, Esq., *Appellants* ;
ALEXANDER CAMPBELL of Ballochyle, Esq., *Respondent.*

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v.
CAMPBELL.

House of Lords, 18th February 1819.

PROPERTY—RIGHT OF FERRY—USAGE—GRANT.—The respondent claimed a right of ferry from Dunoon to the opposite shore of the firth of Clyde, which he stated he had possessed both by immemorial usage, and by express grant, for a period of 150 years undisturbed. This right included the Kirn, and points elsewhere on the Dunoon side. The appellant had no express grant of ferry ; but as Kirn was within his property, he chose to erect a public ferry there, contending that a proprietor of one barony cannot by law prevent the erection of another ferry over the same water beyond his bounds. In an application for interdict (injunction), held the respondent entitled to prevent the erection of such ferry. Affirmed in the House of Lords.

Attached to the respondent's property in that district of Argyll called Cowal, there is a right of ferry between the village of Dunoon and the opposite shore of the Clyde. This right he enjoyed by a series of charters granted by the Argyll family from 1658 downwards, which expressly conveyed the right of ferry, and he had exclusively possessed this right until very recently, that the late Mr Campbell of Glendaruel had attempted to participate in the profits of the ferry, by establishing a rival ferry at the Kirn, Dunoon, for transporting cattle, goods, and passengers for hire.

The respondent presented a petition to the sheriff for interdict, upon which, after due discussion, the sheriff pronounced this interlocutor:—"Having advised the petition and debate, Sept. 25, 1812.
" together with the whole charters produced, interdicts, prohibits and discharges John Black and Duncan Campbell of Glendaruel, mentioned in the petition, and all others employed by them or either of them, from ferrying any

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- Mar. 10, 1813.
- “ person, cattle, or goods for hire from the place called the
 “ Kirn, across the firth of Clyde, until they show they have
 “ a right so to do.”
- An advocacy having been brought to the Court of Session, the Lord Ordinary pronounced this interlocutor:—
 “ Finds it sufficiently established, that in virtue of ancient
 “ charters derived from the family of Argyll who were pos-
 “ sessed of various regalities and baronies erected into an
 “ earldom, the pursuer and his predecessors have long pos-
 “ sessed a right or privilege of ferry which is usually exercised
 “ between the port and lands of Dunoon and the opposite
 “ side of the river or firth of Clyde: Finds it asserted by
 “ the pursuer, and not denied on the other side, that in the
 “ exercise of this right, he and his predecessors were not con-
 “ fined to the lands belonging to them (barony of Dunoon),
 “ but occasionally made use of the landing-place at the Kirn,
 “ and elsewhere, when necessary; and, farther, that the
 “ defender, who also holds his lands of the family of Argyll,
 “ though situated in a different barony, has no right of ferry;
 “ and until a very late period, never pretended to exercise such
 “ right: Finds that with a view to the police and to the
 “ safety of the lieges, no new ferry or ferry boat can be
 “ warrantably established, especially in such a situation as
 “ that in the river or firth of Clyde, opposite to the properties
 “ of the parties, until the same has been examined and
 “ approved of, and the fares settled by the justices of the
 “ peace and commissioners of supply, as authorized by law:
 “ Finds that under all these circumstances the pursuer was
 “ authorized in following out his own right, to apply to the
 “ Judge Ordinary for the purpose of maintaining the pos-
 “ session as it had been enjoyed for a long period; therefore,
 “ refuses the representation and additional representation,
 “ and adheres to the interlocutor represented against; finds
 “ the representer liable in expenses; allows an account
 “ thereof to be given in, and remits to the auditor to tax
 “ the same.”
- Dec. 2, 1813.
- On reclaiming petition to the Second Division of the Court, their Lordships pronounced an interlocutor adhering; and on second petition they pronounced this interlocutor:—
- Jan. 18, 1815.
- “ Adhere to the interlocutor reclaimed against, in so far as it
 “ continues the interdict, and finds expenses due; and refuse
 “ the desire of the petition to that effect; but find it unneces-
 “ sary to determine as to the other findings in the interlocutor
 “ of the Lord Ordinary.”

Against these interlocutors, the present appeal was brought to the House of Lords.

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Pleaded for the Appellants.—1st, The respondent never produced or referred to any legal title in his person to support him in the very entrance of this action. He was the original pursuer; and it is the universal rule in practice, that the pursuer, especially when litigating about an heritable right, is bound to prove a valid and unexceptionable title in his own person. The title, however, of the respondent, instead of giving him the right of ferry within the territory in which the appellants' station is situated, is absolutely exclusive of such right. The charter founded on gave him a conveyance merely to "illam cymbam transfertoriam vulgo vocat, the ferry boat of Dunoon, cum domibus, ædificiis, et terris eidem pertinent, et adjacent, &c., jacen. in baronia de Dunoon." The properties and rights thus conveyed, are such as lie or take their origin within the barony of Dunoon; but the appellants' lands do not lie within that barony. On the contrary, by charter 1680, six years after the respondent's charter, they are described to lie within a different barony altogether.

2d, There is no rule or precedent in the law of Scotland, which has declared that the proprietor of one barony, having a right of ferry, can legally prevent the establishment of a ferry over another part of the same water or channel opposite to a different barony. This has never yet been found in Scotland. And if it has not, the appellants submit that parties who have acquired their lands under a belief that they were free from restraint, cannot now, with justice, be put under any limitation in the use of their property.

3d, Neither could grounds of *public interest* be founded on to justify the interdiction of the passage boats belonging to the appellants' constituent. On the contrary, the establishment of the appellants' right would have been of essential benefit to the public, and the situation of the property must carry conviction of the utility of the establishment.

4th, At all events, the interdict, by the interlocutors appealed from, has been granted in too general and broad terms. The interdict is broad and unqualified, prohibiting the appellants or their tenant "from ferrying any person, cattle or goods for hire, from the place called the Kirn across the firth of Clyde." But the respondent's right of ferry extends only from the barony of Dunoon to a station called the Cloich on the opposite side of the channel, while the interdict is made to apply to no point in particular on the opposite side, and,

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therefore, may apply to any fishing village on the opposite side, of which there are many.

Pleaded for the Respondent.—1st, The respondent has an indisputable right to the ferry of Dunoon, in all the extent to which it has been exercised in time past, whether by himself or his ancestors; and from time immemorial this usage has extended to the point of Kirn.

2d, Independent of such usage, he is entitled, at common law, to interdict and put down any ferry which is attempted to be established so close in his vicinity, as necessarily to interfere with his ferry.

3d, Besides, by their charters, the appellants can show no right to set up a ferry at the Kirn; while, by the respondent's grants and charters, there is an express right of ferry conferred.

After hearing counsel,

It was ordered and adjudged that the said interlocutor of the 18th January 1815 complained of be, and the same is hereby affirmed: And it is further ordered and adjudged that the other interlocutors, so far only as they are adhered to by the said interlocutor of the 18th January 1815, be, and the same are hereby affirmed, and that the appeal be dismissed.

For the Appellants, *John Clerk, John Cuninghame.*

For the Respondent, *John Cay, Henry Davidson.*

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MEEK
v.
MITCHELL, & C.

THOMAS MEEK, Writer in Glasgow,

Appellant;

THOMAS MITCHELL & COMPANY, and
JOHN HARPER, Thread Manufacturers
in Glasgow,

Respondents.

House of Lords, 26th, April 1819.

ACT—CONTRAVENTION OF—ILLEGAL SEIZURE.—The Act 28 Geo. III. c. 17, made certain regulations in regard to the manufacture of linen thread, otherwise called Nun's thread, and the respondents, manufacturers of that thread, were alleged to have committed a breach of these regulations. Held that they had committed no breach of these regulations, and ordained that the seized thread be restored, reserving claim for damages as for an illegal seizure. Affirmed in House of Lords.

This was an action brought by the appellant, as procurator-fiscal of the Justice of Peace Court of the Lower Ward of