[19*th March* 1840.]

(No. 5.) JAMES NEILSON, Appellant.[1]

[*Lord Advocate* (*Rutherfurd*) — *Donaldson.*]

Mrs. JEAN DONALD, or COCHRANE, Widow of JAMES COCHRANE, Farmer at Linwood, and others, Respondents.

[*James Anderson* — *S. S. Bell.*]

Vicennial Prescription — Service — Stat. 1494, *c.* 57.; *Stat.* 1617, *c.* 13. — In 1809 a party was served nearest and lawful heir to the grantor of a deed of settlement, and he thereupon executed a ratification of the said deed. A reduction of the deed, and of the service and ratification, was brought by another party in 1833, on the ground that he was a nearer heir of the grantor:—Held (affirming the judgment of the Court of Session), that the statute 1617, c. 13., was rightly pleaded in bar of the action.

2D DIVISION.

Lord Ordinary Cockburn.

Statement.

IN March 1802 John Neilson, at Linwood, now deceased, executed a disposition and settlement of his whole property, heritable and moveable, in favour of James Cochrane. This deed having been questioned by parties alleged to be the nearest relations of the deceased, Cochrane obtained a deed of ratification confirming the disposition and settlement from James Neilson at Newland Craigs, who in 1809 expede a general service, and was retoured nearest heir of the disponer John Neilson. This ratification was afterwards made the subject of

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[1] Rep. 15 D., B., & M., 365; Fac. Coll. 17th Jan. 1837.

judicial proceedings by the appellant, who had taken out a brieve in 1811, but did not then expede a service as heir of John Neilson. No further step was taken till 1833, when the appellant having expede a general service as nearest heir of the deceased John Neilson brought a reduction, ex capite lecti, of the disposition and settlement, and also of the deed of ratification and of James Neilson's service.

Statement.

Among other defences, the respondents pleaded in limine, that the action, in so far as it was brought for setting aside the retour and service of James Neilson, was excluded by the act 1617, c. 13.

A record having been made up on this preliminary defence, the Lord Ordinary reported the cause on cases to the Court.

The Lords of the Second Division (14th May 1835) allowed the parties to give in additional cases if they should think fit, and appointed the same, with the cases and the record, to be laid before the whole judges for opinion.

The consulted judges returned the opinions subjoined. [1]

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[1] Opinions by the Lord President (Hope), Balgray, Gillies, M'Kenzie, Corehouse, Fullerton, Jeffrey, and Cockburn:—

"We have considered the cases given in by the parties, and the interlocutor of the Second Division of the Court, of date 14th May 1835, and we consider that the conclusion in favour of the defenders is unavoidable.

"The act 1617, c. 13., 'statutes and ordains that the said act of parliament' (referring to the act 1494, c. 57.) 'shall noways hurt nor prejudge the nearest of kin to seek reduction of the saids retours and service to be past and expede in time coming, and that within the space of twenty years immediately following the date of the saids retours and services; and if the saids summons of reduction be not intented, executed, and pursued before the expiry of the said twenty years, that the said action of reduction of the said retour and service,

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On again advising the cause, the Lords of the Second Division (17th January 1837) pronounced the following judgment:—

Statement.

" ' shall prescrive in the self, and no party to be heard thereafter to pursue
" ' the same reduction.'

" The terms of the act appear to be clear and unambiguous, par-
" ticularly when considered in reference to the act 1494, to which it
" alludes.

" It is very difficult to conceive that the framers of the act 1617, c. 12.,
" intended by the act, c. 13., both passed, it may be said, on the same
" day, to alter, vary, or to do any thing inconsistent with the object of the
" other statute.

" The act, c. 12., declares, that where a title is produced, followed by
" infeftment, and clad with possession for forty years, the same shall create
" a good, valid, and sufficient right. The title referred to is either a
" direct conveyance or a retour, or a precept of clare.

" The act, c. 13., relates solely to one of the titles referred to in the
" act, c. 12., and there appears to be no inconsistency in declaring, that
" a particular title shall be held, after a certain period of time, unobjec-
" tionable and unchallengeable. This forms but one element of the act,
" c. 12.; and the other requisites must concur before the benefit of the
" act can be obtained.

" When the difficulty of establishing propinquity is considered, which
" in most cases depends upon human testimony, it does seem highly ex-
" pedient and just to limit the period within which a service can be set
" aside, and the party of new called upon to undertake a probation; and
" we are persuaded that this was the view of the legislature.

" We are the more confirmed in this view of the statute from consi-
" dering what is laid down by our institutional writers from an early
" period, and uniformly adhered to. These are distinctly laid down in the
" case for the defenders, from page 10 to page 16. These cannot be
" disregarded.

" The unfrequency of discussion on this point, and the paucity of
" decisions, seem to indicate an acquiescence of the profession and of the
" public in the opinion given out by the professed authors on the law,
" in so clear and in so decided a manner.

" The case referred to by M'Kenzie, 22d November 1665, Younger
" v. Johnston, was not then decided, but it was finally determined
" 28th November 1665, Stair's Decisions, vol. i. p. 315, and there the
" Court were of opinion and found ' the reduction of retours to prescrive
" ' sooner than other right.'

" We consider the case of Bargany to be in no ways applicable to the
" present. It was a very peculiar and circumstantial case. The retour
" in that case was of so singular a nature as to bear in gremio a complete
" explanation.

" Upon the whole, therefore, we are of opinion, that in a question with

" The Lords having advised the cause, with the " opinions of the consulted Judges, and heard counsel " for the parties, sustain the third preliminary defence " heirs the act 1617, c. 13., applies, and that the defender is entitled to " plead the benefit thereof.

" We may add, in conclusion, that as to all the consequences that " may be deducible from this unavoidable interpretation of the law, " we cannot prejudicate; that must be left, if required, to legislative " interference."

Statement.

The following opinion was returned by Lord Moncreiff:—

" Though it is not without considerable difficulty, I concur in the " result of the above-written opinion. But as I cannot concur in the " view taken in it of the statute 1617, c. 13., I think it proper to explain " the ground of my opinion.

" The institutional writers have been greatly at a loss to determine " what is the precise meaning and effect of the act 1617, c. 13., so as to " render it not inconsistent with the immediately preceding statute 1617, " c. 12. This last act provides, that men shall not be disturbed in the " enjoyment of their estates, who have bruiked or possessed them by virtue " of infeftments made to them by the King, or other superior or author, " ' for the space of forty years,' provided they can produce either a charter " preceding the entry of the forty years possession, with seisin on it, or " where there is no charter, instruments of seisin ' standing together for " ' the space of forty years, either proceeding upon retours or upon pre- " ' cepts of clare constat;' which rights are declared to be ' valid and " ' sufficient rights, being clad with the said peaceable and continual pos- " ' session of forty years, without any lawful interruption,' &c. The act " 1617, c. 13., on the narrative of the act 1494, by which summonses of " error against the determinations of inquests were declared to prescribe, " if not pursued within three years, provides that that act shall not prejudge " the nearest-of-kin to seek reduction of such retours within twenty years, " and that if the summons ' be not intented, executed, and pursued " within the space of twenty years,' &c., the action of reduction shall " prescribe, and no one be heard to insist in it.

" I cannot think that the second of these acts has an indiscriminate " application to all retours, or to all grounds of challenge, or that the two " acts can be reconciled, simply on the ground that the last relates only " to one of the titles mentioned in the first. For to say that two or more " infeftments, proceeding on a retour of service, and clad with forty years " possession (as equivalent to charter and seisin with forty years posses- " sion), shall secure the party against every challenge of his title—and to " say that a retour alone, with or without seisin, by the mere lapse of " twenty years, shall in every case secure a party against any challenge " of that title, appears to me to involve a contradiction in principle which " the framers of the first act cannot be supposed to have intended. And

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" pleaded for the defenders, and decern; Find expenses " due, and allow an account thereof to be given in, and " remit the same to the auditor, when lodged, to tax " and report."

The pursuer appealed.

Appellant's Argument.

Appellant.—The vicennial prescription of 1617, c. 13., was a mere extension of the triennial prescription of 1494, c. 57., and applies only to actions of error against the inquest. The statute 1617, in the immediately pre-

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" it farther appears to me, that such a construction of the act is not recon-
" cileable with the opinions delivered in the case of Bargany.

" In general I think that the act, in the restraining part of it, was in-
" tended to protect the parties once served against the necessity of again
" producing, after twenty years, the proofs of their propinquity in blood
" to the deceased. Taking this to be the effect of it, though it may also
" protect against irregularities in the proceedings, I think, though with
" difficulty, that it must secure the retour in this case against the parti-
" cular ground of challenge brought against it. My cause of difficulty
" is this:—The pursuer does not object to the statement of James Neil-
" son's propinquity to John Neilson in Brownside, from whom he drew
" his descent; he only says that that descent was through the second son
" of John, while the pursuer is descended of Matthew, an elder son; and
" if the direct case be put, that A. obtained a service as heir of his father,
" and that after twenty years B., stating himself to be an elder son,
" absent perhaps at the time, challenged the retour, I should have hesi-
" tation in saying that the door was shut against his plain right by the
" vicennial prescription. I am aware, however, of the case of Younger
" v. Johnston, 22d November 1665, and what Mackenzie has said on it
" in his supplemental note, and only mean to express a doubt on the
" principle.

" But I am of opinion, that in this case the retour of James Neilson
" is of such a nature, according to the statement in the record, as neces-
" sarily to bring it within the statutory prescription. He is served
" nearest heir as being the grandson of John Neilson: In this it is im-
" plied, that his father was either the eldest son or the eldest who has
" left descendants; and as the name of his father does not appear, the
" ground of challenge set forth in the summons and record is truly an
" impeachment of the propinquity on which he has been served. I
" therefore concur with the other Judges in thinking, that in this case
" the action is barred by the statute."

ceding chapter to that creating the vicennial prescription, renders it necessary that a party setting up a title against the true owner of land should have possessed upon the title set up by him for forty years. In the present case there has been no such possession. To hold then that a party who has simply expede a general service, without the adverse possession required by the twelfth chapter, is entitled to prevent the true owner from vindicating his right, would be to make these two provisions utterly inconsistent with each other, or, in other words, to make the provisions in the thirteenth chapter entirely supersede those of the twelfth, without the slightest apparent intention in the legislature so to do. But again, the nature of the service which was expede must be borne in mind. It was not a case of special service, where the party tries to connect himself with the lands. It was a mere general service, under which nothing is transmitted but personal rights to lands not clothed by infeftment. It is well known that these general services are almost invariably carried through without any opposition, or any one to watch the proceedings, and if they are not reducible after twenty years, there is scarcely an estate in Scotland which would be safe from this course of proceeding, and, at all events, the most serious consequences must follow. If, in a proceeding not watched, and having no other effect but to pass personal rights to lands, and not followed by any visible act of possession, all parties are excluded from challenging by the mere lapse of twenty years, the law of prescription would be a downright mockery. Indeed, it might actually happen that the true heir had had the possession during the whole twenty years, but from negligence or ignorance had allowed an inept retour to stand unreduced in the person of another.

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Appellant's Argument.

If a retour alone could be reared up into a valid title to the party served without further evidence or documents, what becomes of the well known maxim, "nulla sasina "nulla terra;" or what indeed becomes of the whole doctrine of the positive prescription of forty years? In fact, if the plea maintained on the other side were sustained it would annihilate the forty years prescription of land rights altogether.

The point in question was fully considered in the Bargany cause, and the dicta of the judges in that case entirely favour the view now maintained. A mere general service is not one of the rights forming the title to property, a sasine proceeding upon a retour as referred to in the statute is a sasine proceeding upon the retour of a special service; a general service is not in itself, like a special service, the warrant of sasine; and hence, even if the appellant should be held as excluded by the terms of the thirteenth chapter of the statute from reducing the general service in question, that would in no degree prevent him from challenging the sasine proceeding on the disposition and settlement executed on deathbed, unless forty years peaceable possession thereon can be established by his opponent.

Respondents Argument.

Respondents.—The words of the statute 1617, c. 13., either taken alone or in connexion with the terms of the act 1494, sufficiently demonstrate that their application was not limited to actions against the inquest for error.

The import of the 12th chapter of the statute of 1617, is to prevent the true owner of property from challenging a defective title, after the party having the defective title has been in possession, by virtue of a sasine or sasines for forty years. The import of the thir-

teenth chapter was simply to render the facts found by a jury under a service indisputable after the lapse of twenty years. The object of the statute introducing the prescription of forty years is the protection of land rights, and of the title by which lands are held against all objections whatever. The view of the statute is to render the whole title, after the lapse of the prescriptive period, unchallengeable upon any ground whatsoever. After the forty years have run upon the title, it is sustained by the law in the face of all alleged defects, and against all claimants whatsoever. The act requires an infeftment; and not only so, but an infeftment on a previous warrant. And although the act refers to sasines on retours, as well as other previous titles, it does so with no particular reference to the case of retours as such, but merely as the warrants of the infeftment; inasmuch as the act did not intend that a sasine without a warrant should be effectual, as the basis of prescription. If there has been a possession for forty years, upon an infeftment following on a regular warrant, whether retour or any other, the whole right to the lands stands secure by virtue of this act. But the other and separate statute now under consideration was enacted for a totally different purpose from that of introducing a prescription, by which the whole feudal title should be rendered secure against all objections whatever. It does not enact, nor was it intended to enact, that a retour with twenty years possession should give a title to lands incapable of being challenged upon any ground whatsoever. Except in its incidental and collateral results, the statute does not affect the feudal title to lands at all. All to which the statute has reference is the mere matter of propinquity, — an

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isolated fact, which may no doubt be intimately connected with the title to land, but may also, as in the case of peerages, and titles or offices of honour, be of vast importance even where no land is in question. And in regard to this fact, the statute declares, on motives of very obvious expediency, that if it is fixed by the verdict of a jury it shall be held after the lapse of twenty years to be fixed beyond challenge, against any person coming forward with an opposite allegation. Nothing is more alien to its words or manifest intention, than to say, that merely because the retour is unchallengeable on the point of propinquity, therefore the whole feudal title to the lands is, de plano, to become a valid heritable right. So far as the retour might be subject to challenge by a person claiming to be a nearer heir, that particular step in the progress is no doubt secured by the act. But all other objections to the title, of whatever kind they may be, remain open exactly as before, and will still do so, until the whole title becomes fortified by the long prescription.

There is not, therefore, the slightest collision between the act 1617, c. 12., introducing the long prescription of forty years, and the act 1617, c. 13., enacting the vicennial prescription of retours now contended for. The latter statute merely introduced a qualification on the immediately previous act, to the effect that where a service formed part of the feudal title, that service should, on a sound consideration of the fleeting nature of human testimony, be held after twenty years to be incapable of reduction, at the instance of any person, alleging that he himself, and not the person served, was the true heir. But to this effect, and to this effect only, does the last statute operate; and this plainly involves

no collision or contrariety between the two statutes, but leaves them to act in perfect harmony, according to the entirely consistent views of policy on which they were respectively framed.

Respondents Argument.

The Bargany cause, as observed by the consulted judges, clearly cannot have the slightest application to the present case; for there the parties, so far from disputing the retour, respectively founded upon the facts thereby found as the ground of their conclusions in point of law.

Ld. Chancellor's Speech.

LORD CHANCELLOR.—My Lords, the question in this case was, whether twenty years having elapsed after service of James Neilson of Newland Craigs, as heir to John Neilson of Linwood, there were any provisions under the Scotch acts, to which I shall have occasion to refer, that would bar the remedy of the present appellant, who now claims to be the true heir to that person.

It appears that John Neilson of Linwood, in the year 1802, executed a conveyance of certain estates to a person of the name of James Cochrane, a farmer at Linwood, upon trusts stated in the conveyance. From 1802 to the present time the parties claiming under this conveyance have been in possession of the property. But the question has arisen, whether this conveyance can be reduced, or whether the pursuer is not barred from reducing it by the effect of prescription.

In 1809, James Neilson of Newland Craigs claimed to be the heir of John, and if so, he was the person authorized to dispute the title. He was served heir to John, and retoured as such. Having so far established his title as heir, he confirmed the deed. This was in

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1809, and in 1833, the appellant setting up his claim as heir to John, got himself served heir, and instituted the action out of which the present appeal has arisen, for the purpose of reducing the service in 1809, being then above twenty years standing.

My Lords, by a Scotch act, in 1494, only three years were allowed to a party to dispute the service of another as heir to a person deceased; and that was to be done under a process then existing, which was a process of error imputing to the jury that they had returned an illegal and unfounded verdict, so that the jury themselves might upon that process come in and defend the verdict. If there was error in the verdict, the effect of this process was to get rid of it, or, according to the terms of the Scotch law, to reduce the retour of the service, that is, the verdict of the jury retoured or returned to chancery.

In 1617, by the 13th chap. of the statutes of that year, the period of three years was maintained so far as regarded the proceedings against the jury; but a different period was adopted for the purpose of questioning the title of the party himself who had been served heir, and twenty years were allowed for that purpose. By that statute, therefore, the term of twenty years was given to a party, if he claimed as nearer heir to reduce the service and retour of another person who had served as heir. This act was passed in terms new at that period; it introduced the phrase "reduction of retour;" and this is the act under which the present process was instituted.

In this case then the question is, whether the pursuer (appellant) is not met by the provision of this act. The argument raised in support of the claim of the appellant

was, that although the terms of the 13th chap. of the act 1617, taken by themselves, were nearly free from ambiguity, still that the 12th chap. of the statutes of the same year, passed upon a similar subject, was inconsistent with chap. 13., and that the same construction ought to be put upon the provisions of that act as on the other, or according to some part of the argument adduced, that the provisions of the 13th chap. ought altogether to be disregarded. If, my Lords, it had been the case that there was any inconsistency in the two statutes, according to the ordinary rules of construction of statutes, the last enactment would of course have prevailed; if the provisions of the 13th chap. were inconsistent with the provisions of the 12th, the 12th must have yielded to the 13th, rather than the 13th to the 12th. But I do not find that there is this inconsistency in the provisions of the two acts.

Chapter 13th provides for something distinct from that which has been provided for in chap. 12. In chap. 12. the words are, " that they (that is the parties " in possession) show and produce instruments of seisin, " one or more, continued and standing together for the " space of forty years, either proceeding upon retours " or upon precepts of clare constat," which the statute declares shall be a good title against all persons whatever. There must, therefore, under this statute be not only a possession of forty years, but a possession with an ostensible ground of title; there must be that which would in this country be called an adverse possession, that is a possession hostile to the party claiming the right to the same, having its origin in a title hostile to the right of the party claiming; and this will make a title against all the world. The provisions of the

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13th chap. seem to me to be quite consistent with that title being good against all the world. By the 13th chap. it is only provided that the party served heir shall not be disturbed in his rights as heir after twenty years, by any action brought by another person claiming only to be heir. But the heir may be disturbed by any person who comes in with a stronger title than that of mere heirship. It is quite consistent that those two parties, as between themselves, may be precluded from disputing as to their title after twenty years have elapsed, and yet that another party should not by means of possession adversely acquire a title against all the world till the expiration of forty years. The statute in chap. 13. only provides that quoad the heirship, the service and retour by one party quà heir shall not be disputed by another party who merely comes in quà heir. It is not putting a forced construction upon one or other of those statutes to say, that they are consistent with each other, indeed it seems to me, that this is the obvious import of the words of the two statutes taken together.

My Lords, in the present case we have a party who was retoured heir in 1809, and an act done by him upon that retour, viz. the ratification of a conveyance by his ancestor to a third party, and possession under his assent by the party to whom the deed of conveyance was made. Although the present pursuer may claim by title paramount, the question is, whether under those circumstances he can, in the character of heir, come in and dispute a title of this nature.

As to the consistency of the two chapters of the statute, I do not think that any doubt whatever can exist. But it was said that this 13th chap. of the act related

only to a special, service and not to a general service. It was so said; but it was proved to demonstration, that anterior to this period general service was in use. I think, therefore, that this act must be taken to apply to the law as it existed in practice at the time of its enactment, and must be considered as extending to any proceedings by which a party might be served as heir.

The provisions of these statutes of 1494, and 1617, chap. 13., have also had this objection made to them, that there have not been any decisions founded upon them. That is true, but there are various writers, who from time to time have published works upon the law of Scotland, who have spoken of this distinction between special and general service; and there are some text writers who say that these statutes apply to every species of service. Lord Bankton is one of those; he says that they apply to general service.

I have not found any authority, by which the claim of the appellant can be supported. But then it is said that in the Bargany case[1] there were observations of the judges which supported the appellant's view of the matter. These observations did not fairly arise from the subject matter of adjudication; the case itself proceeded upon a totally different ground. That there was nothing in the case to support the position alluded to was apparent from the answer to a question which I put to the counsel at the bar.

Then, my Lords, it was said that the act of 1617, chap. 13., must be considered as applying only to the species of process which at that time existed, namely, to the prosecution of the jury for an erroneous conclu-

[1] See cases cited, at end of Rep.

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sion. I do not find any ground in the statute for that argument; on the contrary, I find that the statute expressly distinguishes and separately provides for both cases; it givesthe opportunity for twenty years of instituting proceedings for the purpose of reducing the retour, but it gives him three years only for the purpose of instituting this proceeding against the jury. With respect to that proposition, I have also carefully looked through the text writers that have been referred to, for the purpose of seeing whether in those text writers there was any thing to support it, and I can find no allusion to it.

Then it was said, that in order to entitle the party to this defence, he must have what was called possession, by which I understood the learned counsel to mean, not mere possession, but possession under a feudal title, that is to say, he must have made up titles under the service as heir. My Lords, there is not only nothing to support that, but there is the authority of Lord Bankton against it, who states that possession is not necessary.

It is very true, that cases are referred to in the papers, and were suggested at the bar, in which it might be matter for serious consideration, how far a party should be entitled to make an unfair use of the statute, that is to say, where some unjust advantage by concealment or otherwise may have been taken of the true heir. My Lords, if that case should arise, it would be your Lordships duty to put a reasonable and proper construction upon the statute to meet the case presented; but there is no such circumstance in this case, and your Lordships are not therefore called upon to give any opinion upon the subject. (Here his Lordship stated particularly the facts of the case.)

In the absence, therefore, of all authority against the prescription, looking to the plain terms of the act which gives the prescription, and coupled with the circumstances of the case, and weighing the arguments and observations which have been made against it, I trust your Lordships will be of opinion, that (without going further in order to state any opinion as to other circumstances that may arise) the decision of the Court of Session is correct, and that your Lordships will, therefore, affirm this interlocutor, and affirm it with costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutor therein complained of be and the same is hereby affirmed: And it is further ordered, That the appellant do pay or cause to be paid to the respondents the costs incurred in respect of the appeal, the amount thereof to be certified by the clerk assistant: And it is also further ordered, That unless the costs, certified as aforesaid, shall be paid to the party entitled to the same within one calendar month from the date of the certificate thereof, the cause shall be and is hereby remitted back to the Court of Session in Scotland, or the Lord Ordinary officiating on the bills during the vacation, to issue such summary process or diligence for the recovery of such costs as shall be lawful and necessary.

Appellant's Authorities. — Stat. 1617, cc. 12. and 13.; Ersk. b. iii. 8. s. 65. 66. and 67.; Stair, b. iii. tit. 5. s. 35.; Bargany Case, 1 W & S., App., 410, 428; Stat. 1471, c. 47; 1494, c. 57.; Balf. Pra. 420, 421, and cases cited; Acts of Sederunt, 31st July 1630, (see recent edition of A. S. by W. Alexander, Esq.); Reg. Majest. buke i. ch. 14.; 2 Dallas's Styles, 596; Stair, b. 3. tit. 5. s. 42. and 43.; Act of Estates of Scotland, 1689, c. 18.; Colville v. Herd, 16th Feb. 1627, Mor. 2704; Muirhead v. Lichton, 2d Feb. 1632, Mor. 2705, Mitchelson v. Mitchelson, 4th Jan. 1677, Mor. 2706; Mow. v. Duch. of Buccleugh, 7th July

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1663, Mor. 2705; Hume, 28th June 1667, Mor. 2706; Cochrane v. Ramsay, 4 W. & S. 135; Spottis. 363; Kames's Eluc., art. 15, p. 98; Balf. 147, c. 6., and cases cited; Stair, b. 2. tit. 12. s. 15.; Ersk. b. iii. tit. 6. s. 2.; More's Note AA, p. 271, App. ed. of Stair; W. Bell's Dig. Vic. Pres. Eddington, 24th July 1672, Mor. 11292, Ersk. b. iii. tit. 7. s. 41.; Wilson v. Innes, 2d Feb. 1705, Mor. 10974 and 11330; M'K. Inst. b. iii. tit. 8. s. 164; Ersk. b. iii. tit. 7. s. 39.

Respondents Authorities. — 2 Bank, 165, s. 15.; Brown's Synop. 80; Grounds and Warrants, Mor. 3199, 5165; Stair, b. iii. tit. 5. s. 43. 44. 45.; Ersk. b. 3. tit. 8. s. 71.; 1 Jur. Sty. 571; Younger v. Johnstone, see Rep. of Stair, Gilmore, and Newbyth, in Mor. 10924, 10929; Ersk. b. iii. tit. 7. s. 39.; Edinglassie, Mor. 10987; Birkhill's Creditors, 5th July 1742; Elch., voce "Service of Heirs," No. 3.; ibid. voce "Succession," No. 7.; Skene de verbor. signif., voce "Service."

HAY and LAW — ARCHIBALD GRAHAME, Solicitors.