entitled to the expenses in the Court below by reason of that exception—which is exactly the judgment that your Lordships would have pronounced if you had been sitting in the Court of Session instead of the learned Judges whose decision your Lordships have now been reviewing.

Lord Advocate.—In the way that my learned friend now proposes it, I have no objection to it.

LORD CHANCELLOR.—And that the case should be remitted to the Court of Session, allowing to the pursuer the expenses of the fourth exception.

Interlocutor reversed.

First Division. — Robertson and Simson, *Appellant's Solicitors.* — Dean and Rogers, *Respondents' Solicitors.*

MAY 6, 1853.

ARCHIBALD CAMPBELL, *Appellant*, *v.* JOHN LANG, JAMES HUNTER, and THOMAS YOUNG, *Respondents.*

Prescription, Interruption of—Right of Way—Terminus of Highway—Public Place—Issue—Private Statute—*The property of C. was bounded by the Clyde on the north, and the Cart on the west. Along the eastern bank of the latter river, and running from south to north, was a towing path, separated from C.'s property by a hedge. The pursuers, inhabitants of the town of R., on the east of C.'s property, alleged a prescriptive right of public footway across C.'s property to the Cart. In* 1835, *a local statute was passed embodying various matters of contract between C. and the trustees who had formed the towing path, and providing that C.'s property was to be fenced from the towing path by a stone wall to be erected by the trustees.*

HELD, 1. (affirming judgment), *that this statute was no bar to the pursuers' claim of a right of public way.* 2. *That it was a good issue, whether a public way existed to the confluence of two rivers, for the rivers being navigable, the terminus, if not a public place, might lead to a public place.*[1]

Mr. Campbell presented an appeal against the issues approved of by the Court, maintaining —1. That they were inadmissible in the face of the express provisions of the statutes relative to the improvements of the navigation of the river Cart—(27 Geo. III. c. 56, and 5 Will. IV. c. 32.) 2. It is necessary that a public road should have its terminus in a public place; but no public place being proposed to be taken, or being capable of being taken in consistency with the provisions of the statutes referred to, as the terminus, the issues, in so far as relates to the public, were inadmissible. 3. The issues proposed to be taken by the respondents, as inhabitants of Renfrew, were also inadmissible.

The *respondents* maintained in answer—1. The parties being at issue on all material facts, the Court were right in appointing the case to be tried by a jury. 2. In particular—(1.) The objection of the appellant founded on the Cart Navigation Improvement Act, is, with reference to the true meaning of the act, untenable, and, at any rate, depends on matters of fact, which require to be cleared up before the law can be applied; and (2.) The other objections, besides being groundless, cannot be given effect to under the present appeal, in respect they were waived in the Court below, and involve matters which cannot competently be made the subject of appeal.

Sir F. Kelly and *Patton* for appellant.—1. We rely mainly on the statute (5 Will. IV. c. 32) in 1835 as quite extinguishing the right of the public, if any then existed, to the roads in question. Under that statute, there is, and can be, no right of way as claimed. All that the statute authorizes, is a wharf to be erected at the end of the Cart, and the use of it for passengers' luggage is recognized, but nothing in the shape of a road for the public. The 9th section directs a rubble wall, surmounted by an iron railing, to be erected all along the towing-path up to the Clyde, and which is to serve as a barrier separating the path from our lands; and while the statute provides that drains and conduits should be carried through the wall, there is no provision for the public passing; indeed, the very possibility of access is cut off, for the level of the towing path is far below that of the lands. Moreover, the whole space between the rubble wall and the river Cart is directed by the statute to be appropriated to the special purposes of a towing path, and no right of way for the public is consistent with such use. It is said, we ourselves recognized the right of the public to pass over this wall by placing a flight of steps in it; but these were solely for our own use; and as we were not bound by the statute to make these steps,

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[1] See previous report 13 D. 1179; 23 Sc. Jur. 555, 666. S. C. 1 Macq. Ap. 451: 25 Sc. Jur. 393.

this circumstance proves nothing. Such, therefore, being the provisions of the statute, they must have their full effect, however harshly they may operate.—*Edinburgh and Dalkeith R. Co.* v. *Wauchope*, 1 Bell's App. C. 252. 2. There can in point of law be no right of way claimed by the public in the direction alleged, for this reason, that the road has no public place as its *terminus ad quem*. The roads only lead to a point on the banks of the Clyde, where they stop, and there is no means of carrying the communication further. It cannot therefore be said that the roads lead to a public place, and that cannot be a public road which leads nowhere. 3. The issues are not warranted by the condescendence. It is now settled, that the issues cannot be allowed which raise points not raised by the condescendence—*Irvine* v. *Kirkpatrick*, 7 Bell's App. C. 186. There can only be two kinds of road in Scotland—either a public road, or a servitude road, each being quite distinct in its nature from the other—Ersk. 2, 9, 5 and 12; and they require different averments. Now, what the condescendence here states is, that there is a public road and not a servitude road, and there is no averment of a public road for the prescriptive period, but simply of a present possession of one. But a correct averment of a public way must state the public place to and from which it goes—Stair, 2, 7, 10. Stair seems to hold that a river is not a public place in the sense of being a good *terminus ad quem*, unless it is a point of embarkation; but there is no averment of embarkation here. Lastly, whatever right of way may have originally existed, was effectually renounced by the Magistrates.

Dean of Faculty (Inglis), and *Rolt* Q.C., for respondents.—1. As to the statute, it would require express words to take away the public right we claim, or at all events words of strong implication; but neither can be shewn. We are entitled to assume there was a pre-existing right of way, and that that way still exists, unless the statute has taken it away; but there is nothing at all in the statute inconsistent with our claim. It is plain the towing path did not cut off the right of way, for the towing path was authorized to be made by the statute of 27 Geo. III. c. 56; and 5 Will. IV. c. 32, merely extended the power of that statute; and it is admitted that down to 1835 we enjoyed the roads in question, *i. e.* while the towing path existed. Besides, the very permission given by the act, to erect a wharf, presupposes a right of way, and also that there were accesses to the wharf from more quarters than one. 2. There is no necessity for there being a public place to which a right of way such as is claimed here must lead, and there are many ways in Scotland which have no public terminus.

[LORD CHANCELLOR.—Do you mean to say there can be a public right of way claimed over my estate, such that you merely go in at one place and walk round, and then come out at the same place, and which leads nowhere, as it were? If so, that seems a peculiarity in the law of Scotland—it is neither the English law nor the civil law.]

It is not necessary to consider that general question here, though perhaps it may be held to be a moot point in the law of Scotland; and *Cuthbertson* v. *Young*, 20th Dec. 1851, which however is now under appeal, seems to countenance the doctrine, that it is not necessary to shew a public place as the terminus. Yet many cases may be supposed—as, for instance, where there is a way to the summit of a hill from which a view can be obtained, or to a bleaching ground, or to the sea-shore, or the bank of a navigable river, as in this case. A navigable river is always a public place—*Oswald* v. *Laurie*, 5 Murr. 12. Besides, there was a communication from this point of the confluence of the two rivers, to the towing path, along which was a way leading to Inchinnan and Paisley.

[LORD CHANCELLOR.—I don't see that the issue raises the point, whether a navigable river is a good *terminus ad quem*. It merely says, Is there a public road from this point to that point. But, then, if the latter point is not a good *terminus ad quem*, can you be allowed, under your issue, to say, "Oh! but we'll shew the road goes on to somewhere else, which *is* a good terminus." The issue don't seem to allow you to do that.]

Similar difficulties occurred in *Cuthbertson* v. *Young*, and it was thought by the Court, that an issue like the present was in the most convenient form. As to the last two issues, these are limited to the right of the inhabitants of the burgh. From the fact of the wharf being authorized to be made, it appears from the statute, that the inhabitants of the burgh had a right to land at that point, and if so, to proceed further on.

[LORD CHANCELLOR.—How can you distinguish the inhabitants of the burgh from the general public? How are you to define an "inhabitant"? What test of residence are you to fix upon?]

It would perhaps be very difficult to draw any sound distinction, but there is at least an allegation in the condescendence, that the inhabitants have been in the practice of using the roads irrespective of the roads being public.

[LORD CHANCELLOR.—I think such a meaning cannot be attached to the condescendence, which merely says that the inhabitants have been in the habit of using the road, meaning thereby as part of the public, they being of course likely to use the roads most frequently from living in the neighbourhood.]

Lastly, it is inept to say, that the Magistrates had ever made a renunciation of the right of the public to these roads. It is obvious they had no authority to do so, and could not do so effectually in point of law.

LORD CHANCELLOR CRANWORTH.—My Lords, this question is one which lies within very narrow limits. I have come to the conclusion, that the Court of Session has substantially arrived at a correct decision (there may be a little inaccuracy in form) upon the main issues. I do not think it would be useful to the parties, and might indeed be inconvenient to them, to leave the matter any longer in doubt; and, therefore, I proceed to state the view I take upon this subject.

The question arises in this way. Mr. Archibald Campbell is the proprietor of a mansion and park called Blythswood, which is bounded on the north by the river Clyde, flowing westward, and on the west by the river Cart, flowing northward into the Clyde—the north-western extremity of his park and grounds being at the confluence of those two rivers. To the east of this park is situate the town of Renfrew; and being annoyed, I suppose, by what he considered the unlawful intrusion of persons from that town and neighbourhood, through his park up to the Clyde, near the confluence of the Clyde and the Cart, to the north-western extremity of his grounds, he instituted this proceeding, which is an action of declarator, in order to have a decree by the Court of Session, that he was entitled to the exclusive possession of his park, and to exclude all persons from asserting a right of way. The defenders are certain inhabitants of the town of Renfrew, who, I suppose, are meant to represent the parties who assert this right of way. They say that Mr. Campbell cannot succeed in the allegation which he has instituted, because there is, certainly on the part of the inhabitants of Renfrew, but more generally, on the part of the public, a right of way from Renfrew, or from a point in his grounds (described, I think, as the gamekeeper's lodge) at the east side of his grounds coming from Renfrew, up to the confluence of the Cart and the Clyde. Though there is reference to two paths, exactly the same reason applies to the one as to the other. I will deal with that only which is the subject of the first issue directed, called the "Meadowside Road," or the "Waterside Road." The defenders, therefore, as part of the public, say that Mr. Campbell cannot have the declarator he asks for, because they, as well as the rest of the public, have a right of way from Renfrew up to his grounds—(that is not disputed)—to a place called the gamekeeper's lodge, and from thence, across his grounds, to the confluence of the Clyde and the Cart. The Lord Ordinary, I believe, ordered these defenders to make a condescendence. They did so, and stated more at length the nature of their claim to this right of way. The result was, that in the end, the Court of Session directed four issues to be tried, two of them relating to the public right claimed—first to the "Meadowside Road," and, secondly, to the other road called the "High Road;" and also two others, in which the issue was directed, not for the purpose of trying whether there was a public right, but whether there was a right to this road on the part only of the inhabitants of Renfrew.

The pursuer Mr. Campbell objects to the direction and trial of any such issues, and objects to those issues upon two grounds principally. I deal first with the interlocutor directing the issues as to the public right. He says, that whatever right there ever was, has been extinguished by an act of parliament passed in 1835; and that, therefore, the issues directing a trial, to ascertain whether, for 40 years or from time immemorial, there has existed a public footpath (describing it) along the south side of the river Clyde, and proceeding so and so, is absurd; because it is impossible that it can have existed from time immemorial, and because, if it did exist from time immemorial up to 1835, it was then destroyed by act of parliament.

I agree with the pursuer in his argument, that that was a question to be decided by the Court before any issue whatever was directed. The Court had no right to impose on the parties the burden and expense and trouble of trying an issue as to the existence of a right of way, if in point of law it were clear that that right of way had been extinguished by act of parliament. That, therefore, was a question to be preliminarily decided. If the construction put on that act of parliament by the pursuer be correct, he makes out his proposition that the issue has been wrongly directed. Supposing him to fail in that, then he says that the issue is wrongly directed, because the interlocutor directs an issue to inquire whether, from time immemorial, there has been a right of way along the south bank of the Clyde, proceeding onwards to the confluence of the rivers; for he says that there can be no such thing known to the law as a public right of way terminating only in the confluence of the two rivers, though they be navigable rivers; and what is contended for, he says, is not that, but a right of way up to their confluence, and then along the path to the left, or on to the river to Glasgow and other places. Now, my Lords, on that subject I do not believe that there exists any difference between the law of Scotland and the law of this country. I believe the pursuer is quite right in saying that a public right of way means necessarily a right to the public of passing from one public place to another public place. It is suggested that that, though the law of England, is not the law of Scotland; but that there may be in Scotland a public right of way from a given spot, going nowhere, but coming back to the same spot. I doubt if that be the law of Scotland, any more than it is the law of England. It is not necessary to decide that; and I only advert to it for the purpose of not having it supposed that this House acquiesces in that point without further argument, or that that is a correct view of the law as suggested by the Dean of Faculty.

Having stated what the two propositions are with which we have to deal, I will state to your

Lordships why I conceive that this act of parliament has not the operation which is contended for by the pursuer. And for the purpose of seeing what the effect of the act of parliament is, I must assume that, but for the act of parliament the defenders have this right of way to the fullest extent they can possibly contend for. Let me assume, therefore, that the defenders, up to the year 1835, had a right of way from the gamekeeper's lodge (taking that as the terminus *a quo*) up to the confluence of the rivers; that they were in the habit of passing there by hundreds in a day, going to the Clyde or to the Cart to the left, and going along the towing-path up to Paisley and other places in that direction. You must, for the purpose of this argument, assume that to be the case. Was that right extinguished by the act of parliament? Now, I think it would be matter of deep regret if this House felt itself bound, or if any Court felt itself bound, to consider these private acts with such fatal strictness as is contended for by this pursuer. The object of this act of parliament was to enable certain trustees to improve the navigation of the river Cart. I must assume, for the purpose of the argument, that there was, at the time of passing this act of parliament, this right of way, or that there were these rights of way, that are contended for. That being the object of the act, of course the interest of Mr. Campbell, the proprietor of Blythswood, had to be considered and protected. The proposed towing path would run along his grounds. In order, I suppose, to secure his concurrence, or as an act of justice to him, the legislature provided certain securities, that he should not be, more than was absolutely necessary, inconvenienced or damaged by the making of this towing path. For that purpose it provides, that it shall not be in the power of the trustees to appropriate, for the purposes of the act, the lands, ground, or other heritages situate to the east of the line marked and defined upon the plan. There was a line drawn along from the Clyde on the east side of the towing path, and they say that it shall not be lawful for the trustees to enter upon any land to the east of that line, or to raise the towing path above a certain height; and that the lands or grounds situate to the west of that line shall be appropriated exclusively to the widening and deepening of the river and canal, with a wharf or landing place for the use and convenience exclusively of passengers, with the luggage belonging to such passengers. Now, what is the object here? The trustees, for the benefit of the public and for themselves, were to be at liberty to make a towing path, but not in the slightest degree to interfere beyond the specified line with the grounds of Blythswood. Supposing there were no other clause, or supposing there were nothing about fencing, would it not be a monstrous conclusion, that, upon the assumption that there was a right of way up to this line, to pass along the line, and go round by the banks of the Clyde upon the north—supposing that there was a right of way to be used by all the Queen's subjects at any time and for any purpose, can we imagine, because an act of parliament was made authorizing the trustees to make a towing path, that it was meant, by a side wind as it were, to annihilate the right of the public to pass where they had from time immemorial been in the habit of passing? I think such a construction would be an extremely forced one, and that this House and every court of justice would be astute rather to construe it in any other way. I do not feel myself driven to anything like astuteness, as I only take the words as I find them. It does not say that the making of a towing path is to exclude those who had a right to go along there from continuing to do so. But, then, it is said that they are to make the towing path the whole way up to the Clyde. Then it is said, if you make it entirely up to the Clyde, (I anticipate for a moment the fencing clause,) it will prevent anybody coming up from the side. I think that is a most forced construction; and it is quite clear that it was not contemplated that the fence should exclude any one, for it is expressly provided, that Mr. Campbell shall, for the benefit of his house and its inhabitants, have the use of this towing path and landing place as he may think fit. So it is quite clear that some access was contemplated from the grounds into some part of this towing path.

Then comes the 10th section, the one calculated to raise the greatest doubt, which certainly enacts, that the trustees shall be bound and obliged to fence and enclose the towing path on the east side, along its whole extent, from time to time. Now, what is contended is this, that if that is to be construed strictly, (and why, it is said, should it not?) there must be a fence from the Paisley end all the way up to the river Clyde; and that, they say, necessarily excludes the notion of anybody coming along the side of that river from the east or north, and going thence to the confluence of the two rivers. My Lords, I can only say that, in my opinion, when we look at the nature of the act, which in this case was only to make improvements, as between the trustees of a certain navigation and the owner of the lands to be affected by that navigation, we must not construe the act in such a way as to annihilate rights of the public, which never came into contemplation.

If it had not been for the circumstances to which I have adverted, I should be of opinion, that the trustees were to make a fence that should not prevent parties having a right of way, still going along it in some convenient mode. The circumstances I have already glanced at, seem to me to put this matter beyond all possible doubt. It is said that the wharf they were to make can only be used by persons coming in vessels. It provides—"that Archibald Campbell, his heirs and successors, shall have the use of the said wharf in common with others entitled to use

the same, as a place of landing and embarkation for themselves, and all other persons residing at Blythswood House, or *bonâ fide* resorting thereto, or coming therefrom, and of landing and embarking their luggage." If the contention of the pursuer is to prevail to its utmost extent, Mr. Campbell never could have the benefit of the landing place or of the wharf; for if there is to be a fence the whole way from Paisley end up to and into the Clyde, there would be no possibility of his getting there. It is quite clear, that when the legislature said that they were to make a fence, they contemplated a fence all along, so far as that could be made consistently with existing rights. Certainly it must be qualified with reference to the right given to Mr. Campbell; and having to be qualified at all, the inference is irresistible, that the legislature never meant any fence to be made to interfere with rights of way to which that fence would have been injurious. It appears to me, therefore, that your Lordships may safely come to the conclusion, that this act of parliament meant to leave the rights of the public (if rights they had) over the grounds of Blythswood, just as they were, and did not mean to give or take away any right whatever.

That being so, then we come to the point, whether or not the right that is contended for is a right that can exist. It is said that it cannot—that there is no such right known to the law as the right here described, because it is not described as a right of way from one public place to another public place, but a right of way from a public place to the confluence of two rivers. It is said that that is not what the parties meant to try; nor is it such a right as can exist, because the confluence of two rivers is not necessarily a public place. I should have been extremely sorry that the House should have felt itself bound (if it had so felt) to decide this question upon any such trivial and technical ground as that argument suggests. But I am of opinion, and advise your Lordships not to listen to that argument, and for this reason: What we have to look to is to see whether the issue directed is directed in such a form as may represent a good right of way. It will be for the defenders, the respondents, to make out "that, from time immemorial, or for forty years, there has existed a public path or foot road, sometimes called the Laigh Road or Meadowside Road, or Waterside Road, leading from the burgh of Renfrew, or the grounds or territory thereof, entering the land of the defender (appellant) at a point at or near the recently constructed shipbuilding yard of James Henderson and Son, passing through the defender's (appellant's) lands, along the south bank of the river Clyde, and proceeding onwards to the rivers Cart and Clyde, at a point at or near the confluence of the said rivers." Now, supposing that that was not a public place, still the respondent may have been entitled to a public right of way proceeding in that direction; because, if he is entitled to a public right of way proceeding in that direction, up to what is not itself a public place, but yet has a right to go on to the public place, it will be strictly true to say, that he has a right of way from the place in question, up to the spot in question, viz. the confluence of the rivers. The question, therefore, does not arise, whether the confluence of the two rivers is, or is not, within the meaning of the words "a public place,"—the *terminus a quo*, or *terminus ad quem*, making a good public way. The question is, not whether these defenders have a right of way going from one of those points up to the other, and going on further, but whether they are entitled to a right of way which traverses that line; and that may be either because the point at which they arrive is itself a public point constituting a good terminus, or it may be that they have a good right of way from a valid terminus *a quo* going up to the point in question, because they have a right to go farther on to a good terminus *ad quem*.

I should have been glad if the form of directing these issues were more strict, and more in analogy to the form adopted here; but I cannot say that it is a form which does not raise the real point, and therefore I do not feel myself called upon to advise your Lordships to make any variation, by reason of the form being not strictly, perhaps, that which your Lordships would think might have been adopted. Upon the whole, therefore, it appears to me, that if the issue made out that there was no annihilation of a right of way (supposing a right of way did ever exist) by act of parliament, the issue was properly framed to raise that question.

That disposes of the question as to the first two issues. As to the last two, I confess I concur in the view of the appellant here. I do not think that any case is made upon the condescendence to entitle the parties to raise the question, even if these issues were directed, that the right could in point of law exist. The averments are all in the same form—that the public have, from time immemorial or for forty years, possessed and enjoyed the right in question. What is attempted to be raised by those last two issues is this,—that supposing it is not made out that there was a general right on the part of all the public to use these roads, yet there has existed a special private right on the part of the inhabitants of Renfrew, to use them for their special and private benefit. That is what is attempted to be raised by the last two issues; but that is not the true construction of the condescendence. When it is said that the roads in question have been used by the public, and particularly by the inhabitants of Renfrew, that only means that they have been used by the public, and, of course, more often by the inhabitants of Renfrew, because it is a way coming closely from the town of Renfrew, and proceeding in the opposite direction. They would be the parties who would ordinarily use it, but it is impossible for the

pursuer to have inferred from that condescendence that any such question was meant to be raised as is raised by the last two issues. I think, therefore, that those issues ought to be entirely disallowed and struck out. It is merely what is called, in the Courts of Common Law, catching at a Norfolk groat; because it is not a matter that either of the parties meant to bring into discussion. The real question was the construction of the act of parliament; and on that subject I think the appellant has entirely failed.

The course I propose to pursue is, to vary the interlocutor directing the issues, by confining the issues to the first two, and, as to those issues, to affirm the interlocutor; and as to the other two, to direct them to be struck out. I should be glad to hear any suggestion from the bar, as to the way in which that could best be done.

Dean of Faculty.—Perhaps I may be allowed to suggest, that the first interlocutor might be separately affirmed, and probably the second interlocutor might be varied; or a remit might be made to the Court to allow the first two issues, and not the next two issues.

LORD CHANCELLOR.—The first and second issues were quite right, and therefore the interlocutor might be varied and so amended; and we might remit to the Court the issues, with a declaration that the first two ought to be tried, and the next two struck out.

Dean of Faculty.—The instruction of the House might be, to allow the first two issues, and disallow the third and fourth.

LORD CHANCELLOR.—I move that the first interlocutor be affirmed—that the second be varied—that of the issues directed by the second interlocutor, the first two issues be allowed, and the last two disallowed—and, with that declaration, that the second interlocutor be remitted to the Court of Session. With regard to the costs and expenses, I confess, though there is thus a little variation, that I am very much inclined to give the respondents their costs, because, in truth, it is a mere accident that there is any variation at all. No doubt the substantial question has been decided against the appellant; and therefore I am of opinion, though there is that variation, that the appellant must pay the costs, except such as are occasioned by the variation as to the last two issues.

Interlocutors varied.

First Division.—Connell and Hope, *Appellant's Solicitors.*—Grahame, Weems and Grahame, *Respondents' Solicitors.*

MAY 10, 1853.

J. C. HALKETT CRAIGIE INGLIS, &c., *Appellants*, *v.* CHARLES HALKETT CRAIGIE INGLIS, *Respondent.*

Entail—Prescription—Registration—Entail by reference—*Two entails were executed with reference to the lands of H—the one in* 1704, *and the other in* 1730. *The first deed reserved full powers of alteration in favour of the entailer, who was also the maker of the second deed. The second deed was inconsistent with the first, and was not recorded in the register of tailzies. The investiture subsequent to* 1730, *and all following titles, were based upon the second deed exclusively, unless it were held that a clause of reference which it contained to the first deed were sufficient to make that deed the basis of the title.*

HELD (affirming judgment), *that the clause was insufficient for that purpose; that the second deed must be taken as the sole basis of the investiture from* 1730 *downwards; and that the first deed having remained unfeudalized for upwards of* 40 *years, while the second was never recorded, the lands were not subject to the fetters of entail.*[1]

The defenders appealed against the interlocutor of the Court of Session of 18th Nov. 1851, maintaining that it ought to be reversed—1. Because the mutual bond of tailzie of 1704 was the original entail both of Dumbarnie and Halhill, and was duly recorded, and the respondent possessed under titles engrossing restrictions prohibiting sale, &c., *conform to* that recorded deed. 2. Because the conveyance in the marriage contract of 1730 was propulsive of the fee, and was made under conditions, the same substantially as those in the deed of 1704, and *conform to* that deed, and did not therefore require to be recorded in the register of entails. 3. Because the marriage contract of 1730, and crown charter of 1731, did not impose cross forfeitures on the two estates, and could not effectually have done so, without the running of a prescriptive period, which the sale of Dumbarnie in 1754 prevented.

The respondent supported the interlocutor on the following grounds—1. The respondent and

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[1] See previous report 14 D. 54; 24 Sc. Jur. 17. S. C. 25 Sc. Jur. 397.