decision upon them one way would have prevented the necessity of trying the issue, by rendering the question it involves immaterial. But as they have refused to allow an appeal, your Lordships are bound to give an effect to the act of parliament, which was intended to protect parties from harassing and vexatious appeals, which might otherwise have been interposed in every step in the cause, leaving at the same time to the discretion of the Judges the power of permitting them where it is in their judgment just and right that they should be permitted; and that no erroneous judgment which might be given in the progress of a cause should go uncorrected, the legislature has provided, that when a judgment or decree is appealed from, it shall be competent for either party to appeal from all or any of the interlocutors that may have been pronounced in the cause. Authorities upon the subject are of little use, as the question to be determined in each case must be, whether the interlocutor is on the whole merits of the cause? It is therefore unnecessary to consider the cases which were most pressed upon your Lordships by the appellants—I mean those of *Clyne's Trustees* and of the *North British Bank* v. *Collins*—further than to remark, that in the former case Lord Cottenham, admitting that there was not a judgment exhausting the whole merits, uses the expression "merits of the whole case," instead of the words of the act, "whole merits of the case." And that, in the latter, the reference to the accountant seems to have been preliminary to all discussion upon the merits of the case, and for the purpose of enabling the Court of Session to ascertain whether the company had sustained a loss of a certain declared amount. The summons was not for an account, but for a declaration that the company had ceased to exist in consequence of their having suffered a loss exceeding that specified in their deed, and the order of reference to the accountant was to obtain evidence upon which the merits might be ultimately decided. This case, however, must be determined upon its own circumstances, and not upon these authorities. The appellants' attention was directed to the question of the competency of the appeal by their application to the Court of Session, and the refusal of the Court to grant the requisite leave. And I should have thought that if they afterwards chose to take the premature step of appealing, it ought to be at their own peril with respect to the costs; but as my noble and learned friends think that there should not be any costs in this case, I must acquiesce in their view of the matter.

LORD CHANCELLOR.—With respect to the costs, I propose that there be no costs, because the question appeared to have been considered as by no means free from doubt; but if your Lordships are of a different opinion as to the costs, I will not press it.

LORD CHELMSFORD.—I withdraw any doubt I entertain in reference to the opinion expressed by my noble and learned friend.

LORD BROUGHAM.—The ground of my noble and learned friend's doubt was the appellant having had notice of the objection by the refusal of the Court of Session to grant leave to appeal.

LORD CHELMSFORD.—That was the ground of my doubt.

LORD CRANWORTH.—I do not know whether we should make any special provision that this decision will not exclude the question which has been raised upon the competency of an appeal against the ultimate decision.

Mr. Attorney-General.—That will be clear, my Lord.

LORD CHELMSFORD.—I think it will be clear upon the words of the 48 Geo. III. that that will lie open.

Appeal dismissed as incompetent.

Gibson-Craig, Dalziel, and Brodie, W.S. *Appellants' Agents.*—Sang and Adam, S.S.C. *Respondents' Agents.*

JULY 4, 1859.

THE SCOTS MINES CO. and WILLIAM BORRON, *Appellants, v.* THE LEADHILLS MINING CO. and Others, *Respondents.*

Water, running—Mines and Minerals—Interdict—Lease—Construction—*A lessee of minerals having applied for interdict against the lessee of a neighbouring mine, possessing under the same landlord, to prevent him from interfering with a stream of water.*

HELD (affirming judgment), *That each mine owner is entitled to work his own mine in the manner most beneficial to himself, when neither his nor the adjoining mine is subject to any servitude in favour of the other, though the natural consequence may be to prejudice such adjoining mine.*

The Scots Mines Co. and the Leadhills Mining Co. are both lessees under the Earl of Hopetoun of neighbouring mines and minerals in the barony of Leadhills or Hopetoun. The mining district is situated in two valleys,—the one being named the Shortcleugh, and the other the Glengonnar valley. These valleys are separated by a mountain ridge, which keeps the waters of the one valley distinct from those of the other. In consequence of certain alleged operations by the respondents in the mode of working their minerals, which the appellants alleged were contrary to the leases and agreements of parties, and also contrary to certain awards, they presented an application in 1851 to the Court of Session for interdict. The ground was that the Leadhills Co. had cut through a barrier which prevented the water from flowing into the burn that supplied the Scots Mines Co., and which the latter Co. said they were entitled to under these leases. They had also sent too much water into another part of the mine.

The Leadhills Co. pleaded that what they had done was necessary for their own works, and done within their own lands.

The Scots Mines Company appealed, maintaining in their case that the interlocutors ought to be reversed for the following reasons:—I. The respondents are not entitled to break through the natural division or barrier between the valleys of Shortcleugh and Glengonnar, for the purpose of extending the Poutshiel level within their liberties, or for any other purpose, and the appellants were entitled to have them interdicted from doing so. II. The respondents were not entitled to break through the division or barrier, so as to diminish the supply of water in the Shortcleugh burn, to which the appellants were entitled for the purposes of their mining works and operations, and the appellants were entitled to have them interdicted from doing so. III. They were not entitled to break through the said division or barrier, so as to cause the waters of the Shortcleugh burn, or other waters naturally flowing within the valley of Shortcleugh, to flow through the Poutshiel level into the valley of Glengonnar. IV. They were not entitled to use the Poutshiel level within the appellants' mining liberties, or to sink and drive, so as to incommode or interrupt the appellants' mining works and operations within their liberties in the valley of Glengonnar, by causing a quantity of water from the adjoining valley of Shortcleugh to flow into the same. V. The appellants had stated, upon record, facts relevant and sufficient to entitle them to the remedy sought by the note of suspension and interdict, and they were entitled to have the case tried upon a proper issue or issues. VI. The judgments of the Court below proceeded not only on erroneous views in point of law, but on the assumption of facts which were not established, and the contrary of which was offered to be proved. VII. So far as any investigation was ordered by the Court, it was ordered and made in an incompetent manner, at least in such a way as not to be conclusive against the appellants. VIII. The appellants are entitled to the protection of an interim interdict, pending the trial of the case.

The respondents supported the judgments submitted to review on the following grounds:—I. Under the leases of the parties respectively, the Poutshiel level was a drain common to the liberties of both, and the respondents were entitled to use it for conveying away the water that might be drawn from their mines, without any limit or qualification. II. The appellants had no right to prevent the respondents from carrying on the ordinary operations of mining within their own liberties, on the ground that such operations might cause subsidence of water from the higher level called the Katystake Linn level, or of water which would otherwise fall into the Shortcleugh burn. III. The use actually made of the Poutshiel level, in carrying water from the Leadhills liberties, established the right of the respondents to use it in the manner complained of. IV. The operations complained of being stipulated on the part of the landlord by the first article of the agreement of 1817, to which the appellants were parties, they were barred from objecting to these operations, on the ground that the agreement was no longer operative in its stipulations as between them and the Leadhills Mining Company.

R. Palmer Q.C., *Young*, and *Webster*, for the appellants.

The *Attorney-General* (Bethell), and *Anderson* Q.C., for the respondents.

The argument in this case turned entirely on the construction of special clauses in the respective leases of the parties, and the circumstances of the subjects being conterminous. Before hearing the argument, the Lord Chancellor recommended the parties to agree to a reference; but the Attorney-General declined, on the ground, first, that he had no authority to do so from his client; and secondly, that, even if he had, his experience of references led him to consider them as unsatisfactory and expensive. The argument accordingly proceeded.

Cur. adv. vult.

LORD CHANCELLOR CAMPBELL.—My Lords, after reviewing all the proceedings in this case, I again come to the opinion which I had formed at the conclusion of the argument—but which I did not venture without further consideration to state to your Lordships—that the only arguable question presented to you by the appeal arises upon the construction of the reservation in the leases granted by the Earl of Hopetoun to the Scots Mines Company and to the Leadhills Mining Company. The interdict was claimed on two grounds—first, that the operations begun by the respondents would wrongfully divert water from the Shortcleugh burn, to the use of which

the plaintiffs are entitled, by preventing the water from flowing as it had done into the Shortcleugh burn into a stream called the Katystake Linn level, and by preventing water from percolating into the burn underground through adjoining strata, as it had been accustomed to do. The second ground on which the interdict was claimed was, that these operations would have the effect of bringing into the Poutshiel level a much greater quantity of water than had been accustomed to flow into it, which water would be injurious to the works of the appellants. Now, it is quite clear that the interdict cannot be claimed on the first ground, for the operations interdicted are all within the limits of the mineral strata demised by the Earl of Hopetoun to the respondents; the operations are all such as are usual in working such mines, and they are conducted without any bad intention and without any negligence. Moreover, the Katystake Linn level is an artificial stream, formed by the occupiers of the mines of the respondents merely for the temporary purpose of the better working of these mines. Upon this subject it is admitted that there is no difference between the law of Scotland and the law of England; and it is well settled by English decisions, that under such circumstances the appellants could not complain of the diversion of the water that had been before brought into the Shortcleugh burn, either by the Katystake Linn level or by percolation through adjoining strata. I need only refer to *Arkright* v. *Gell*, 5 M. & W. 203; and *Chasemore* v. *Richards*, 26 Law J. Exch. 393. The latter case is under appeal before your Lordships' House. But, my Lords, the Judges who have been consulted by your Lordships upon it have unanimously given their opinion in support of the judgment in the Court below; and I may perhaps anticipate that it will be affirmed by this House. Indeed, the learned counsel for the appellants, who ably and zealously advocated their cause, felt themselves obliged almost to abandon this ground for the interdict, although it had been much relied upon in the Court of Session. I now come to the second ground, which turns on the construction of the reservation in the leases granted respectively to the appellants and respondents. It is to be borne in mind that both parties hold under the same landlord, their leases being substantially the same. The lease to the appellants contains the following reservation:—"Reserving always to the said Earl and his foresaids, or to any other person, with his consent, to whom he has already let, or may hereafter let, the mines of his adjacent grounds, the use of all shafts, sumpts, cuts, levels, drifts, and other waygates, already made, or to be made, within the bounds of the lands of which the mines are hereby let, (excepting only engine shafts,) with power of sinking and driving within the said whole grounds for the conveniency of his or their other works, in so far as the same can be done without incommoding or interrupting the said governor and company, their own proper works, which are always to be preferred in such cases. The said Earl and his foresaids always repairing any damage which the said governor and company may thereby suffer: and any ores which may be thereby raised shall belong to the said governor and company in the same manner as if they had raised the same themselves." When the interdict was granted the respondents had begun, and were about still further to extend the Poutshiel level in search of lead within their limits; and by so doing they would cause an additional flow of water into the Poutshiel level, which, to a certain degree, would *incommode and interrupt the works* of the appellants. Had this operation been beyond the limits of the respondents for the convenience of their works, it certainly would have been unlawful; for the power of sinking and driving on the grounds of a lessor beyond the limits of the lessees, is clearly qualified by the words, "in so far as the same can be done without incommoding or interrupting," &c. And the question is, Whether this qualification applies to the use of all shafts, sumpts, cuts, levels, drifts, and other waygates within the bounds of the lands let to the respondents, the proposed extension of the Poutshiel level being within these bounds? By the sixth interlocutor the Court "Find that the limitation thus contained in the said reservation in the lease applies only to the additional powers of sinking and driving, and does not apply to the use of the levels, drifts, and waygates; that, under the whole leases, the tenants of both sets of liberties are under the burden of receiving the additional drainage created by the extension of the workings in the veins lying in the fields on the highest levels; and the suspenders have no title to interfere with, or prevent the extension of, the Poutshiel level in the course of the ordinary mining operations in the liberties let to the respondents, on the ground that thereby additional drainage may be sent down the Poutshiel level." My Lords, I agree in thinking that such must be taken to have been the intention of the parties by this reservation. There seems to me to be clearly a distinction made between what was to be done within the limits of the demised premises, and what was to be done under a sort of servitude created over the property of the lessor. Within these limits the lessees might justifiably do all that is done according to the usual course of mining in such a district, whatever might be the consequence to the lessor or his tenants; but beyond these limits, although upon the adjoining property of the lessor, they might, for the conveniency of their own works, open cuts, levels, &c., they were not permitted to do anything which would incommode or obstruct the works of the lessor, or of the other tenants of the lessor. The provision for making reparation for damage, and for giving the ore obtained in the exercise of this power, seems to shew clearly that the qualification is confined to the exercise of the power beyond the limits of the mines which were demised. It is

said that the occupiers of the mines on the lower level may thus be exposed to a perilous liability of being drowned or flooded. But the occupiers of the mines on the higher level are only empowered to do within their own limits what may be done prudently in the ordinary course of mining, and they certainly would not be justified in incautiously tapping a tarn, and so inundating the country below. It must be recollected that, without any convention, the occupier of a lower field holds it under the servitude of receiving the natural drainage from an adjoining field on a higher level, and that by convention property may be subjected to a serious peril, from which it would otherwise be protected. Of this we have a striking example in the case of *Rowbottom* v. *Wilson*, 6 E. & B. 593.[1] I may likewise refer your Lordships to the case of *Smith* v. *Kenrick*, 7 C. B. 515,—in some of its circumstances not unlike the present, in which it was laid down that it is the right of each of the owners of adjoining mines, where neither mine is subject to any servitude to the other, to work his own mine in the manner which he deems most convenient and beneficial to himself, although the natural consequence may be, that some prejudice will accrue to the owner of the adjoining mine, so long as such prejudice does not arise from the malicious or negligent conduct of his neighbour. I have only further to mention the complaint of the appellants that the issues proposed by them were not granted. I think, my Lords, that a trial of those issues was most properly refused, for both parties requested that the Court would decide the question of law which arose on the facts as they then stood; and, according to the allegations of the appellants themselves, these questions of law must be decided against them. If they have sustained, or may hereafter sustain, damage from the operations, it must be considered *damnum absque injuriâ*. For these reasons, my Lords, I am of opinion that the interdict was properly recalled, and that the appeal should be dismissed with costs. My Lords, I am authorized by my noble and learned friend, LORD CHELMSFORD, who heard the whole of the argument, to say that he entirely agrees with me in that opinion.

LORD BROUGHAM.—My Lords, I entirely agree with my noble and learned friend, in the conclusion at which he has arrived. I only lament that the points, which are really very few in this case, I may say really only one, namely, the construction of the clause of reservation, have not been made by the proceedings in the Court below the only point before us, and then we should have been spared this enormous mass of discussion in the shape of various papers, books, and documents, and the arguments founded upon them. The case lies in a very narrow compass. I entirely agree with my noble and learned friend in his observations, both upon the first and upon the main point. The main point is the construction of the reservation; and really though the reasons given by my noble and learned friend for differing the two cases, of a power given as to the whole, and a power given as to a particular part, seem perfectly cogent, I cannot help thinking that the reading of the words themselves leaves no doubt whatever that the reservation is the same in the leases to both parties—both to the Scots Mines Co. and to the Leadhills Mining Co., with merely verbal exceptions. The words are, "reserving always the use of all shafts, sumpts, cuts, levels, drifts, or other waygates," (it is chiefly as to the waygates that the question arose,) "already made or to be made within the whole grounds hereby let to the said governor and company, except engine shafts alone, with power of sinking and driving within the said whole grounds for the conveniency of his or their own works, in so far as the same can be done without incommoding or interrupting the said governor and company, their own proper works, which are always to have the preference in such cases." Now, the question is, whether these words, "in so far as the same can be done," are referable to the first antecedent, namely, "the use," and so forth, or to the last antecedent, namely, "the power of sinking and driving." Now, I agree that a mere grammatical error, which may, in many cases, amount to nothing more than a verbal error, might signify little; but when we come to consider the construction of the whole of this, we must see whether a sensible construction is given to the sentence, by the contention, that this qualification, "in so far as the same can be done," refers to the first, and not to the immediate last antecedent. Now, see how it is: "in so far as the same can be done without incommoding or interrupting the governor and company;" what is the antecedent to "the same"? what is it that is signified by "the same"? It is contended that it means the use of all shafts and waygates; but is it a sensible construction to say that, "in so far as the same can be done without injury, and so forth," can possibly apply to the use of the waygates? but if the words, "in so far as the same can be done," are taken as applying to the last antecedent, viz., "the power of sinking and driving within the said whole grounds for the convenience of his or their other works;" that is perfectly intelligible and rational—that is, in so far as the same can be done, the sinking and the driving can be done, no doubt. I therefore really have no doubt whatever, upon the construction of this qualification in the reservation clause, that it applies to the last antecedent, "sinking and driving within the whole grounds;" and the reason given by my noble and learned friend why there should be a difference as to the grounds beyond the scope of the lease and the whole grounds, appears to be perfectly unanswerable. My Lords, my noble and learned friend referred to a case which is now pending before this House, of

[1] This case was afterwards taken to the House of Lords and affirmed, 8 H. L. C. 348.

Chasemore v. *Richards*, upon which the unanimous opinion of the Judges has been given; but we have not yet disposed of it.[1] I mentioned to my noble and learned friend, while he was speaking, that there would be no doubt as to the House of Lords agreeing with the learned Judges,—although I believe there will be some doubt upon that subject on the part of one of your Lordships—at least I believe he has not yet come to agree in opinion with the learned Judges; but I may mention that the opinion which has been given is not only the unanimous opinion of the learned Judges who heard the case here, but that it is an affirmance of an unanimous opinion of the Court of Exchequer Chamber. There was some difference in the Court of Exchequer.

My noble and learned friend near me (LORD WENSLEYDALE) held the opinion which was overruled by the Court of Exchequer Chamber, and it is possible that he may still adhere to his former opinion.

LORD CRANWORTH.—My Lords, I have very little indeed to add to what has already been said by my noble and learned friend on the woolsack and my noble and learned friend opposite. My Lords, with regard to the first point of complaint, namely, that the works that were carried on by the respondents tended to injure the appellants' works, by obstructing the flow of certain water that used formerly to go into the Shortcleugh burn, by choking up the Katystake burn, that part of the case was in truth abandoned—not absolutely abandoned, but nearly so—in the argument. It has been decided upon principles that are applicable as well to the law of Scotland, indeed to the law of all countries, as to the law of England, that if the obstructing of a stream which you have made yourself merely temporarily for the purpose of facilitating the working of your own mines, does cause injury to anybody who has temporarily benefited by what you have been doing, it is clearly *damnum sine injuriâ;* you have a right to stop up the stream; it is no longer necessary for your own objects. My Lords, on the pleadings here the case is rather hinted at than distinctly alleged, that not only the water was obstructed by stopping the Katystake burn, but also that the percolation was impeded. I do not think the case is very distinctly made on the pleadings; but even if it were, I should still agree that that was also *damnum sine injuriâ;* because (if for no other reason) the fact of such an obstruction as that is only to be ascertained by the opinions of scientific men, and I think never can be the subject of any common law right. I do not know whether your Lordships may entirely agree in that. But, upon the whole, I think that, on both these grounds, there is not a pretence for any complaint on the first part of the case, namely, the obstruction of the water that used to flow into the Shortcleugh burn. Indeed, that was not the main part of the case. The main part of the case relied on was the latter branch, viz., that by the mode in which the respondents are now working the upper levels, they cause an increased quantity of water to flow down the levels into the lower mines, the mines of the appellants, and thereby occasion them injury. But I think, on this part of the case also, that the appellants have no ground of complaint. What they say is, that the respondents, by pushing their works in the upper mines, will cause an increased body of water to flow down the Poutshiel level, and so cause damage to them; and upon these pleadings, it must be assumed that that is the truth; but then, if that is so, I am of opinion that the damage is *damnum sine injuriâ.* The landlord expressly reserved to himself and his lessee of the upper mines the use of, "*inter alia,*" the levels of the lower mines. This must mean the use of the levels for all ordinary mining purposes, that is, to let the water of the upper mines flow through those levels; otherwise there would be no meaning in such a reservation. It is admitted that the respondents are doing nothing which is not in the ordinary course of mining operations. But, my Lords, it is said that this reservation, according to the true construction of the deed, is qualified by the words "in so far as the same can be done without incommoding the other parties;" the words are these,—"Reserving always to the Earl and his foresaids, or to any others to whom he has already let or may let the mines in his adjacent grounds, the use, *inter alia,* of all levels already made or to be made within the bounds of the mines, which are already let, with power of sinking and driving within the said whole grounds, (that is, the grounds of both parties,) for the conveniency of his or their other works, in so far as the same can be done without incommoding or interrupting the said governor and company, their own proper works." The question is, whether this qualification extends to all that has gone before, or only to the sinking and driving. Now, I think it appears clear, upon the context, that it must be referred to the sinking and driving only, for two reasons. In the first place, if it were to extend to the former part of the reservation, it would make the reservation absolutely nugatory, because it is admitted that you cannot have water flow from your neighbour's mines into yours without doing some damage, or at least some inconvenience, to your level by reason of that additional flow of water: it never could be meant, therefore, that a reservation should be made which was perfectly idle for the purpose for which it was made. And in the next place, I think so upon the words themselves, because, as has been pointed out by my noble and learned friend opposite, the

[1] That case was afterwards affirmed, and is a leading case on the subject of underground water, *Chasemore* v. *Richards*, 7 H. L. C. 349.

words are, "the power of sinking and driving within the said whole grounds for the conveniency of his or their other works, in so far as the same can be done without incommoding or interrupting." That is very rational if that reservation, in so far as it can be done, is confined to the sinking and driving, because that is an act that is done, and the words are applicable to that; and it was necessary to make such a reservation where the parties were authorized to sink and drive in other lands than those in which their own mines were situated. Upon the whole, therefore, my Lords, I entirely concur with my noble and learned friend in thinking that this appeal ought to be dismissed, and dismissed with costs.

LORD WENSLEYDALE.—My Lords, I took no part in the hearing of this case since the first part of it was disposed of, and therefore I ought not to give any opinion upon it; and I should not have risen except to advert to the circumstance, that my noble and learned friend on the woolsack has cited the case of *Chasemore* v. *Richards* as if it had been finally decided,—it yet remains for the decision of your Lordships upon the opinion of the learned Judges.

Interlocutors affirmed, and appeal dismissed, with costs.

Gibson Graig, Dalziel, and Brodie, W.S. *Appellants' Agents.*—Sang and Adam, S.S.C. *Respondents' Agents.*

JULY 15, 1859.

Mrs. ANNE LIVINGSTONE or FENTON and Husband, *Appellants*, *v.* ALEX. LIVINGSTONE, *Respondent.*

Legitimacy—Marriage—Deceased Wife's Sister—Domicile—Parent and Child—Foreign—Stat. 5 & 6 Will. IV. c. 54.—*A Scotchman by birth, having acquired an English domicile, was regularly married in England to the sister of his deceased wife. The second wife died in England in* 1832, *and during her life no challenge was made of her marriage. She left a son. In* 1835 *the Act* 5 & 6 *Will. IV. c.* 54, *was passed, by which marriage with a deceased wife's sister was declared to be void, but it saved from challenge all such marriages as had not been challenged, and which had been dissolved by the death of the wife before the date of the act. In* 1853 *the succession to an heritable estate in Scotland opened to the son of the second marriage on the supposition that he was to be held legitimate by the law of Scotland. Evidence was laid before the Court of Session to the effect that, by the law of England, he was to be held as legitimate in that country since the date of his mother's death.*

HELD (reversing judgment), (1) *That the Court was not bound to recognize the law of England, if it conflicted with the policy of the law of Scotland, or the notions of morality and religion there prevalent.* (2) *That even if English law were regarded, then such a marriage was, by that law, deemed void, though no proceeding to declare it void was allowed in England after the death of one of the married persons.*[1]

The late Alexander Livingstone of Bedlormie executed a bond of tailzie in 1702, by which he obliged himself to dispone his lands and barony of Bedlormie and others, in the county of Linlithgow, to himself in liferent, and to his eldest son George Livingstone, and the heirs of his body; whom failing, to his sons Alexander, James, William, and Thomas, and the heirs of their bodies successively; whom failing, to any persons he should nominate; whom failing, to his heirs male whatsoever; whom failing, to his other heirs and assignees whatsoever, the eldest heir female succeeding without division.

The last heir vested under the entail was Sir Thomas Livingstone, a direct descendant of Robert Livingstone, the sixth son of the entailer. Sir Thomas died on 1st April 1853, without issue. He had several brothers, all of whom predeceased him, and was survived by the pursuer, his only sister, who is entitled to the estate, failing her brothers and their issue.

One of the brothers of Sir Thomas Livingstone was named Thurstanus. He was born about the year 1771 or 1772, in Scotland—his father, Sir Alexander Livingstone, being a domiciled Scotchman.

On the 5th of October 1797 Thurstanus married, in London, Susannah Dupuis or Brown, a widow, who was of French extraction. Upon her death, he was regularly married, also in London, on the 7th August 1808, to her sister Catherine, or Catherine Ann Dupuis. The defender Alexander Livingstone, born in 1809, is the offspring of the said second marriage, and, if legitimate, is entitled to succeed to the estate before his aunt, the pursuer.

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[1] See previous reports 18 D. 865: 28 Sc. Jur. 393. S.C. 3 Macq. Ap. 497: 31 Sc. Jur. 578.