judgment more cautiously than the conclusions of the summons are expressed.

Agents for Pursuers—Adam & Sang, S.S.C.
Agents for Defenders—Renton & Gray, S.S.C.

Thursday, January 9.

MUIR, PETITIONER.

Messenger-at-Arms—Sheriff-officer. Circumstances in which Court authorised execution of summons by sheriff-officer.

George Walker Muir craved the Court to grant authority to have a summons executed in Mull by a sheriff-officer.

BRAND (for him) stated that there was no messenger-at-arms in Mull, and that, if the summons had to be executed by a messenger-at-arms, it would be necessary to send one from Oban, where there was only one, or from Glasgow or Greenock. Owing to the difficulty of travelling in winter, a fortnight would probably be required for the messenger going to Mull and returning. That would be a great expense, and the delay would be prejudicial.

LORD PRESIDENT—We shall grant authority in this case; but it must not be understood to be a matter of course that all summonses to be executed in Mull are to be executed by a sheriff-officer. The application is rather granted in respect of the season of the year.

Agents for Petitioners—D. Crawford and J. Y. Guthrie, S.S.C.

Friday, January 10.

BIRRELL *v.* BEVERIDGE AND STEEDMAN.

Jus quæsitum tertio—*Sale—Missives of sale—Reserved power of redemption.* Circumstances in which a claim of *jus quæsitum tertio* repelled.

Birrell brought this action of reduction and declarator against Beveridge and Steedman, in the following circumstances:—On 18th May 1865, Beveridge and Steedman entered into missives of sale of a house belonging to Steedman, and occupied partly by Birrell. The missives contained a stipulation that Birrell was to get a seven years' lease of the premises, and "he will have power to redeem the property at the end of the lease at the same price." The missive was not holograph of Steedman. Shortly after, the intention of the purchaser and seller was altered, and instructions were given that the deed of conveyance, when executed, should contain a provision of lease and power of redemption in favour of Steedman, instead of Birrell. The deed was executed on 24th May. In July 1865, Steedman discharged his right of redemption for a money payment. Birrell now sought reduction of the discharge of the right of redemption granted by Steedman to Beveridge, and declarator that he was entitled to enforce the stipulation in his favour contained in the missive of 18th May. In support of this claim he produced missives, bearing to be dated 10th May, by which Steedman sold the property to him. These last missives were holograph of the parties. The defenders contended (1) that the missives of 10th May were not executed of the date they bore, and (2) that the missives of 18th May were improbative.

A proof was taken.

The Lord Ordinary (ORMIDALE) found that Birrell had failed to prove that Beveridge was, on 18th May, aware that the subjects had been previously sold to Birrell; but found it proved that Beveridge, soon after the 18th, and before he and Steedman arranged the alteration on the agreement, knew that a copy of the missives of 18th May had been given to Birrell, and Birrell was thus made aware of the condition therein in his favour; and held, in these circumstances, that, in point of law, the pursuer Birrell had a right conferred on him by the missives of 18th May, which could not be defeated by any arrangement to which Birrell did not give his consent; and therefore sustained the claims of the pursuer in the present action.

The defenders reclaimed.

Lord Advocate (GORDON) and HALL for them.

GIFFORD and SCOTT, for pursuer, in reply.

LORD PRESIDENT, founding his judgment upon the documentary evidence, held that Beveridge was not proved to have had any knowledge of a previous onerous claim on the part of Birrell; and further, that the pursuer had failed to prove the date of the holograph missives of 18th May.

LORD CURRIEHILL differed, and held, on an analysis of the parole proof, that the existence of the missives of 10th May, at that date, or at least before 18th May, was proved. He thought, further, that the objection founded on the improbative character of the missives of 18th May was obviated *rei interventu;* and held that Beveridge was put into such a position that he ought to have sought information from Birrell as to the nature of his reserved right.

LORDS DEAS and ARDMILLAN concurred with the Lord President.

Interlocutor reversed, and defenders assoilzed.

Agents for Pursuer—D. Crawford and J. Y. Guthrie, S.S.C.

Agents for Defenders—Watt & Marwick, S.S.C.

Friday, January 10.

DOUGLAS' TRUSTEES *v.* DOUGLAS AND OTHERS.

Heir and Executor—Heritable and Moveable Debts—Relief—Discharge. A testator conveyed his whole estate, heritable and moveable, to trustees, who were to pay all his debts, and, after expiry of his widow's liferent, to convey a certain property of A to a party named, and the residue of his estate to his nephews and nieces. The testator left considerable debts, and, in particular, three heritable bonds over the said property of A. The widow, who was one of the trustees, and who mostly managed the trust, paid off and discharged these bonds. In an action of multiplepoinding after the death of the widow, the testator's trustees claiming to treat the amount of the bonds as a debt of the testator which had been paid out of his general estate, *held* (1) that the trustees were neither bound nor entitled to relieve the disponee of A of the amount of the bonds, to the effect of diminishing the amount of residue payable to the residuary legatees. (2) That, in fact, the widow paid off the bonds out of her own funds,

intending thereby a donation from herself to the disponee of A.

Observed, that the rule of intestate succession, that heritable debts fall upon the heir, and moveable debts on the executor, applies also to testate succession, unless it is clear that the testator intended otherwise.

Mr Gilbert Douglas, of Douglas Park, died in 1807. He left a trust-disposition and settlement appointing his wife, Mrs Cecilia Douglas, and certain other parties, trustees, and conveying to them his whole estate, heritable and moveable. The first purpose of the trust was for payment of funeral expenses, "and all debts that may be justly owing by me at the time of my death." The second and third purposes were payment of legacies and annuities. The fourth purpose was payment to his widow of one-third of the whole free residue, excepting the lands of Douglas Park and Boggs, "which one-third part I do hereby convey, legate, and bequeath to the said Mrs Cecilia Douglas, her heirs, executors, and successors, as their absolute right and property." By the fifth purpose, Mrs Douglas was to have a liferent of the remaining two-thirds, including the lands of Douglas Park and Boggs. With regard to the fee of the two-thirds of the estate, the deed provided, after the death of Mr Douglas, "for payment and delivery of the said remaining two-third parts of the said free residue of my whole estates, real and personal, of whatever kind, the lands of Douglas Park and Boggs, hereby otherwise disposed of, being always excepted, to my nephews and nieces, children of the aforesaid George Douglas, Margaret Douglas, Janet Douglas, and Anne Douglas, equally among them, share and share alike, and their heirs, executors, and successors, excepting always from any part of the division of the aforesaid two-third parts of my said estates, real and personal, the person who shall succeed to the lands and estates of Douglas Park and Boggs, who is hereby specially excluded." On the death of Mrs Douglas, the trustees were to convey the lands of Douglas Park and Boggs to her nephew, Robert Douglas, certain substitutes being called in the event of his failure. On the death of Mr Gilbert Douglas his widow took the principal management of the trust. Mr Douglas left a considerable amount of debt, and in particular, he left three heritable bonds over Douglas Park and Boggs, for £2500, £2500, and £2700 respectively, in all, £7700. Before the end of the year 1819 these bonds were all paid off and discharged. The present question relates to these bonds. The last of the bonds was discharged in November 1819. It was a bond by Mr Douglas to the trustees of a Patrick Robertson. The discharge bears that payment had been made by Mrs Douglas "from her own proper funds, but on account of the trustees afternamed of her said deceased husband," and the bond was discharged by the creditors in favour of Gilbert Douglas' trustees, "and all others, the heirs, executors, and successors of the said Gilbert Douglas." The terms of the other discharges were similar. Mrs Douglas died in 1862, leaving a trust-disposition and settlement. In that deed she states that, in virtue of the powers in her husband's trust-deed, she had sold certain properties belonging to him in Demerara, and had received the price. The deed then proceeds: "And whereas at the time of his death his estates and effects, both in Scotland and in the West Indies, were encumbered to a very great extent with debts; and whereas I have paid off a very large proportion of these debts, which payments operate as counter-claims or set-offs to the prices received by me as aforesaid; and whereas, with the view of expressing my respect for the memory of my said husband, and my attachment for his heirs and representatives, I am desirous to liquidate a certain part of the said payments, so as that to that extent they may not be used as counter-claims by my said trustees in accounting for the prices or sums received by me as aforesaid: And whereas I had at one time intended to discharge the said heirs and representatives generally of the said payments to the extent of £18,000, including the heritable debts secured over Douglas Park and Boggs, and paid off by me: And whereas it is more agreeable to my present feelings to carry my said intention into effect by assigning to particular individuals of the said heirs and representatives, excepting the heir of Douglas Park and Boggs, in whose favour the aforesaid heritable debts are to be discharged as after mentioned, certain proportions of the debts due by my said husband and paid off by me as aforesaid in the form of legacies and annuities." On this narrative, she instructs her trustees to ascertain the amount of the debts so paid off by her, and she assigns her right in the same in certain proportions to various individuals named: And "whereas the debts due by my said husband at the time of his death comprehended sums heritably secured over the estates of Douglas Park and Boggs, which having been paid by me, were duly assigned in my favour: And whereas I am induced by a regard for the memory of my said husband, to relinquish my claim for the amount of these debts in favour of the heir in possession of said estates: Therefore I hereby direct and empower my said trustees or trustee, immediately after my decease to make up titles to the said heritable debts, and thereafter to execute a discharge and renunciation thereof in favour of the said heir."

In the action of multiplepoinding in which the residue of Gilbert Douglas' estate fell to be distributed, a question arose as to the effect of the payment of the bonds over Douglas Park and Boggs by Mrs Douglas. Mr Gilbert Douglas' trustees treated the £7700 as a debt of the testator, which had been paid out of his trust-estate. The residuary legatees objected.

The Lord Ordinary (KINLOCH) held that it was manifestly the intention of Mrs Douglas to discharge the heritable debts over Douglas Park and Boggs out of her private property. Her original intention was to discharge all the debts of her husband, which she had paid at least to the amount of £18,000. To a certain extent, she changed her purpose, and in place of discharging the debts, she assigned them to certain parties. But in regard to Douglas Park and Boggs, her original purpose remained. It made no difference in the matter of intention that the debts had in fact been discharged. Her intention was the same, that the debts should be discharged from her private means. It followed that no claim was made for their amount against her husband's estate. The trustees of Mr Douglas were now accounting for the residue of his estates, exclusive of Douglas Park and Boggs. They claimed to retain this £7700 from the admitted residue. But that claim was unfounded. The raisers had neither paid, nor were they bound to pay those debts, for they had been paid before 1819 by Mrs Douglas out of her own funds. There could be no claim for reimbursement at the instance of Mrs Douglas or her trustees, for that claim was expressly discharged by Mrs Douglas' settlement.

Mr. Gilbert Douglas' trustees reclaimed.
Solicitor-General (Millar) and Shand for them.
Clark and Lee for residuary legatees.

Lord President — After stating the parties to the action, and the position of the fund, said—In the sum of debts and charges there is included a sum of £7700, which is taken credit for by the trustees, as being the amount of debts paid by them. Now, these debts were secured over the truster's heritable estate of Douglas Park and Boggs, and the first question is, whether the trustees were entitled or obliged to pay these debts? whether the truster's general estate and residuary legatees were liable to relieve the heir, to whom Douglas Park and Boggs had been left, of the amount of these debts? This appears to me to be a very important question in point of law, and one which the Lord Ordinary has hardly considered. He seems disposed to think that the heir who takes that estate under the provision of Gilbert Douglas' settlement is entitled to be relieved of these debts at the expense of the residuary legatees. I am of the opposite opinion, and on very clear grounds. I think that the heir taking Douglas Park and Boggs was not entitled to relief by the executor; and, as this point of law is sufficient for the determination of the whole case, and is in itself of very considerable general importance, I shall explain the grounds on which I propose to rest my judgment, by a reference to the principal authorities.

Gilbert Douglas disposed of his whole estate by a deed of settlement, and that deed of settlement is expressed very clearly and unambiguously as regards all parts of his succession. He had heritable estate in Scotland, and some property in the West Indies, and a considerable amount of moveable property. He conveys the whole to his trustees, and, *inter alia*, Douglas Park and Boggs. He makes a great many arrangements as to the West India property, and gives large powers to his trustees to sell, dispose of, and generally realise his estate. Then, after certain legacies, he disposes of the residue, and with regard to Douglas Park and Boggs he directs that it shall be liferented by his widow, and that, on her death, it shall be conveyed to Robert Douglas, or certain other parties in the event of his failure. Nothing is said about the heritable debts specially, but there is a clause which provides that the trustees shall, in the first place, as the first purpose of the trust, make payment of the truster's funeral charges and expenses, and all his just and lawful debts. The gentleman to whom Douglas Park and Boggs was to be conveyed, appears to be the truster's heir-at-law; but I do not attach much importance to that, for he is *hæres factus*, and takes the heritable estate just as the heir-at-law would have taken it in the event of intestacy. Now, in the case of intestate succession, the rule is clear that the heir is bound to pay all the debts secured over the heritable estate, and all debts of an heritable character. The executor is bound to pay all debts of a moveable character, and they are bound mutually in relief, so that if a creditor sues the heir for a moveable debt the heir is entitled to relief against the executor, and *vice versa*. The principle of this rule is of great importance, and it is well brought out in the leading case of *Carnoustie* (M. 5204). Spottiswoode's report of the case is short, but very clear. "In an action pursued by the Laird of Carnoustie against the Laird of Meldrum, there was a question concerning certain debts of the umquhile Laird of Meldrum, whether they should light upon the heir or executor? The heir alleged, that he ought to be relieved of all his father's debts by the executor, so far as the moveables will extend. The executor alleged, he ought only to relieve the heir of all moveable debts owing by the defunct; but as for debts owing by him on heritable bonds, he owed no relief thereof to the heir, but he should be liable therefor, and relieve the executor thereof, *quia quem sequuntur commoda, eundem etiam incommoda.* Next, *ab identitate rationis*, the executor is obliged to relieve the heir of all moveable bonds; therefore the heir is obliged to him in the like for heritable. *Tertio, Hæredes succedunt in universum jus defuncti, tam hæres mobilium, quam immobilium*, and should be heirs *respective in suo genere, tam active quam passive.* The Lords found that the heir should have his relief off the executor of all moveable bonds, and the executor should be relieved of all heritable bonds, and this after they had thought upon it two or three days." So that was a very deliberate and well considered judgment on the general rule as arising in intestate succession.

Now, it appears to me that the principle of this judgment applies in the case of testate succession also. But it is unnecessary to pursue the consideration of that, for it appears to me to be matter of express decision that in testate succession the same rule applies unless the testator shall have otherwise provided. When a testator provides his heritable estate to one party and his moveable estate to another, the same rules apply to these parties, unless another rule is specially appointed. I would go farther, and say that no loose expressions in a settlement will be allowed to defeat the general rule of law. There is a very instructive case of *Fraser* v. *Fraser* (M. App. 3, "Heir and Executor"), which was cited to us in argument. The testator there disponed his heritable estate to his cousin Simon Fraser, binding himself to make up proper titles and convey the lands to him, his heirs and assignees; and then, with regard to his personal estate, he directed that his "funeral charges and expenses, together with all my just and lawful debts, be paid by my executors hereafter named, as soon after my decease as conveniently may be: all the rest, residue, and remainder of my estate and effects, of every nature and kind whatsoever, and wheresoever situated, I give, grant, and bequeath, assign, convey, and dispone to my uncle James Fraser of Gorthhill, Esq., his heirs and assignees; and I hereby nominate and appoint him, the said James Fraser, to be my residuary legatee." Now, it appears that the only debt of the testator was a bond for £2000, secured over his heritable estate, the creditors in which were Helen and Grizel Fall. They brought an action against the executors for payment of this bond, and the executors brought a counter-action against Simon Fraser, the disponee of the heritable estate, for relief. The Lord Ordinary found "the whole defenders, conjunctly and severally, liable for payment of the heritable bond libelled on; but, in respect the settlement by which the lands of Knockie are disponed to Simon Fraser of Farraline, one of the defenders, could only import a right to those lands subject to the heritable debt with which they were burdened, and that the clause taking the executors bound to pay the debts cannot have the effect of altering the right of relief between him and his executors, Finds the executors entitled to relief from said Simon Fraser of Farraline, Esq., of the heritable bond libelled on,

conform to the conclusions of their action of relief." Now, it is a remarkable circumstance that this bond for £2000 was really the only debt of the testator. The case was brought before the Court by petition, but the Court were of opinion, adhering to the Lord Ordinary's interlocutor, "that, without a special clause to that effect, the legal rules of accounting between heir and executor could not be altered." "Without a special clause to that effect"—these words have a very important signification taken in connection with the fact that in the settlement in that case there is a distinct burden laid on the executors to pay all the testator's debts. And yet the Court held that that did not alter the legal rules of accounting. Now here, no doubt, the trustees are to pay all the testator's debts, but that must, in my opinion, be read as not being such a special clause as to alter the legal rules of accounting. This decision is directly in point. We have another authority in the recent case of *Bain;* and indeed I hold this rule to be finally established in the law and practice of Scotland. It is a rule of very extensive application. Sometimes it is enforced in favour of the heir, or, if it is not exactly the same rule, it is at least a parallel rule founded on considerations of equity. Of that there is an example in the case of *Forbes* (Hailes, 138). I need not trouble your Lordships by reading the details of that case, but the effect of that judgment was to apply in favour of the heir the same principle as was applied in favour of the executors in the case of *Fraser*, and that, although there was a conveyance to the heir with this declaration, that by acceptance thereof he bound himself to pay the truster's debts, even that was not sufficient to alter the legal rules regulating the rights and liabilities of the parties taking the heritable and moveable estate.

There were two cases cited as authorities to the opposite effect, but neither of them has any application here. The case of *Campbell* was a case where the object of the testator was to make an addition of land to his entailed estate, and it was held there that the true import of the testament was that these lands should be disburdened of debt before being added to the entailed estate; and there are strong grounds for supposing that such lands, to be added to an entailed estate, are first to be disburdened of debt. *Coventry* was a peculiar case, and depended for decision on the single circumstance of a *mortis causa* disposition with a clause of absolute warrandice, and it was on a construction of that that the judgment proceeded. Therefore the authorities are all one way on the question, and the result is by no means doubtful—that the trustees of Gilbert Douglas not only were under no obligation to relieve the disponee of Douglas Park and Boggs of these heritable bonds, but were not entitled to pay these debts to the effect of diminishing the residue payable to the residuary legatees. I am, therefore, for adhering to the interlocutor of the Lord Ordinary.

But although I proceed on this as the clearest and most important ground of judgment, I am not inclined to differ from the Lord Ordinary's ground of judgment. I agree with him in his view of what was done by Mrs Cecilia Douglas during her possession and management of the truster's estate. But it is not necessary for me to go into that. I content myself with expressing my entire concurrence.

Lord Curriehill—I concur that, on the grounds your Lordship has stated, the interlocutor of the Lord Ordinary ought to be adhered to.

I think that the heir, or rather the disponee of Douglas Park and Boggs, took the right provided to him exactly as it stood at the death of the testator. That is the ordinary presumption in such cases. Now, at the date of the testator's death, his right was qualified by these bonds. The question whether debts are to be paid by this disponee or by the residuary legatees, depends on a construction of the provisions of the settlement. That is established by the decisions. In some cases there is no doubt that the testator intended his debts to be paid off by his general representatives, especially when the subject is to be entailed, because otherwise the provision would contain an element destructive of the entail. But if there are no special instructions, the presumption is that the subject is to be taken subject to all those burdens imposed on it by the testator himself. That is well established by the authorities.

That is sufficient to dispose of the case, but the same result would arise from the proceedings of Mrs Douglas herself. She was possessed of ample funds, and when she made her settlement, I think she made a special provision that the £7700 should be paid out of her own funds, and should be received by the heir as a donation from herself. Her settlement is quite explicit on that subject. I think, moreover, that when she paid the debts, in the deeds which she took from the creditors, she made that expression of her intention in unequivocal terms. She was under a mistake as to the nature of the deeds, but as to her intention the terms of the deeds are clear, showing that the intention in her settlement was being carried out by her when she made the payments. It is said that during the period between the date of her settlement and her death, in certain proceedings with one beneficiary with whom she was not well pleased, she indicated an intention of changing her mind. Whether she was in earnest or not in that expression of intention is of no consequence, for if she changed her mind, she did not change her settlement. It will not do merely to show that, during the period of survivance after making a settlement, a testator has indicated a purpose of changing it, if the resolution is not carried into effect. The settlement left forms the rule by which we must go. I think the Lord Ordinary's judgment ought to be adhered to on both grounds.

Lord Deas concurred.

Lord Ardmillan—I think the result of the Lord Ordinary's decision is right, and on both grounds argued, though he has placed the judgment on one only. As a general rule, the two successions—the heritable and the moveable—bear respectively the burdens which naturally attend them; the heritable estate bearing the heritable debts, and the moveable estate bearing the moveable debts. The whole estate is liable for the whole debts, but the law recognises a right of relief and recourse between heir and executor, the heir who has paid a moveable debt having recourse against the executor, and the executor who has paid a heritable debt having recourse against the heir. (Ersk. 3. 9. 48.) Nor is this right of relief cut off, or the appropriate incidence of heritable and moveable debts affected, by a grant of heritage to the heir under burden of all the granter's debts, or a grant of moveables to the executor under burden of all the granter's debts. Such a grant is viewed as a corroborative

security to the creditors, for the debts are a charge against the whole estate, but it does not alter the course of succession, or the character of the debts, or the incidence of the burdens, or the rights of relief emerging on payment. If there is no special provision in the deed excluding relief, or directing distinctly the application of particular funds to payment of particular debts, the general obligation to pay debts, whether laid on the heir in a grant of heritage, or laid on the executor in a grant of moveables, will not affect the rights of relief. Special words are, I think, necessary to alter the rights of the parties. In this case there are, in Gilbert Douglas' deed, no special words affecting the relative rights of the heir in the heritable estate and of the residuary beneficiaries; and, in the absence of such special words, I think the heritable estate must be viewed as passing to the heir *cum onere*. The result is, that Gilbert Douglas' trustees were not entitled to apply the moveable estate to payment of the heritable debts secured over the landed estate. The cases of *Carnoustie* v. *Meldrum*, and *Bain* v. *Reeves* (29th Jan. 1861, 23 D. 416), mentioned by your Lordship, tend to support the views which I have explained; while the cases of *Campbell* and *Coventry* rest on special grounds. For this reason, I am of opinion that the pursuers, trustees of Gilbert Douglas, are not entitled to deduct from the fund *in medio* the £7700 applied to the payment of the debts heritably secured over Douglas Park and Boggs.

But on the other ground—that taken by the Lord Ordinary—I also think the judgment right. This is a question between the trustees and the residuary legatees of Gilbert Douglas. The heir of Douglas Park is not claiming. The trustees declare they are not contending for his interests. The widow's trustees are not claiming for her estate. They cannot, for her will excludes them, and her final and conclusive intention must be held as expressed by that will. This is a plea by Gilbert's trustees to support a refusal to account for this £7700. The debts have been paid. The creditors have no claim. They were paid by Mrs Douglas out of her funds. The discharges so state, and her will so states. The trustees have not proved that the payments were made otherwise than as she has stated. If made by her, she could have taken assignations. She thought she had, and that thought tends to support the view that she had paid the debts. But, though she got no assignations, she got discharges stating that she had paid. She relinquished her claim against the trust-estate. The effect was to throw the £7700 into the trust, and in the absence of special provision, into residue. As against the claim by the residuaries, there is no opposing claim. For whom do the trustees maintain their pleas? Not for the creditors, nor the heir, nor Mrs Douglas' representatives. Then *cadit questio*, for there is no competing claim. These trustees cannot maintain a claim, except for behoof of some party interested in the trust. They cannot deduct from the fund *in medio* a sum which they are not bound, as trustees, to dispose of. It has not been easy to obtain from them an explanation of the disposal which they contemplate. But ultimately I understood them to say they meant to hand it to Mrs Douglas' trustees (the same persons, as I believe) as part of her estate. This mode of disposal is, I think, negatived by her will, which is the final and conclusive expression of her intention. I am therefore of opinion that the judgment of the Lord Ordinary is right.

Agents for Reclaimers—Tods, Murray, & Jamieson, W.S.

Agents for Respondents—Mackenzie & Kermack, W.S.

Friday, January 10.

SECOND DIVISION.

DUCHESS OF SUTHERLAND *v.* WATSON AND OTHERS.

Property—Mussel-scalps—Fishing—Express Grant—Barony—Prescription—Patrimonium principis—Jus Publicum. *Held* (1) that the right to take mussels from the shores and sands of the sea is not a *jus publicum*, nor held by the Crown as trustee for the public, but forms part of the patrimonial estate of the Crown, and, as such, is capable of alienation; (2) that an express grant of mussel-scalps, or of the right to gather mussels, is not indispensable to constitute the right in a subject, but that that may be acquired under a general title containing a grant of fishings, followed by exclusive prescriptive possession. Observed (*per* Lord Neaves) that the Crown is *dominus* of the *solum* of the sea within the boundary-line of the dominions of the British Empire.

This was an action at the instance of Her Grace the Duchess of Sutherland and Countess of Cromartie, and of the Duke, for himself and as her administrator-in-law, against certain fishermen and women residing at Cromarty, and also against Alexander Matheson, Esquire of Ardross, proprietor of the lands of Ballintraid and Pollo, and Sir Charles William Augustus Ross of Balnagown, Bart., proprietor of the lands of Rhives or Portleich. The summons concluded for declarator "that the pursuer, her Grace Anne Mackenzie Duchess of Sutherland and Countess of Cromartie, has the sole and exclusive property in and right to the whole mussel-beds, scalps, or fisheries on the shores and sands of Nigg, and in the Bay of Cromartie, within the boundaries hereinafter specified, to wit, bounded on the north by the lands and barony of Tarbat, the property of the pursuer the Duchess of Sutherland and Countess of Cromartie; on the west by the said lands and barony of Tarbat, the lands of Rhives or Portleich, the property of the said Sir Charles William Augustus Ross, and the lands of Ballintraid and Pollo, the property formerly of Kenneth Macleay, Esquire of Newmore, afterwards of Thomas Ogilvy, Esquire of Corriemony, and now of the said Alexander Matheson; on the south-west by a line measuring 4360 feet in length or thereby, drawn from the march between the said lands of Ballintraid and Pollo and the lands and barony of Invergordon into the Firth of Cromarty, bearing 25 degrees and 30 minutes north by west; on the south by a line measuring 2 miles and 3400 feet in length or thereby, drawn from the extremity of the said other line last mentioned, bearing 7 degrees and 30 minutes east by north, and meeting the course of the burn called the Pot Burn, as the same is left by the sea at ebb tide; on the east by the said Pot Burn, to the point where it joins the march of the said lands and barony of Tarbat," as the said boundaries are marked by a red line on a plan of the said mussel-scalps, or beds, or fisheries, prepared by Alexander Maclean, land-surveyor, Rosskeen, produced with the summons, "and that the pursuer, the said Duchess of Sutherland and Countess of Cromartie, has the sole