the time of the winding-up of the company, I think that *prima facie* they must be held to be rightly on the register, and while their names remain on the register I think the appellant has neither right nor title to apply to have the names of the respondents restored to it.

I think the circumstance that the names of Messrs Rose, Weir, and Crabbie appeared on the register as holding the shares "in trust" for the company does not affect the question involved in the present application. These words may or may not affect the personal liability of these gentlemen, but that is a point which your Lordships are not now called on to decide.

I am therefore of opinion that the result arrived at by the Court of Session was right, and that the appeal should be dismissed.

Interlocutor appealed from affirmed, though on different grounds, and appeal dismissed with costs.

Counsel for Appellant—Benjamin, Q.C.—Davey, Q.C. Agent—William Robertson.

Counsel for Respondent—Herschell, Q.C.—Gifford. Agents—Phelps, Sidgwick, and Biddle.

COURT OF SESSION.

Saturday, June 28.

SECOND DIVISION.

SPECIAL CASE—TENER'S TRUSTEES *v.* TICKLE AND OTHERS.

Writ—Stat. 37 *and* 38 *Vict. c.* 94 (*Conveyancing (Scotland) Act* 1874), *secs.* 38 *and* 39—*Informalities of Execution—Subscribing* ex intervallo *and after Granter's Death by a Party not Called as an Instrumentary Witness.*

A lady handed over certain heritable property for religious purposes to a body of five trustees by a deed prepared by her husband (who was not a lawyer), which was bilateral in form though unilateral in substance, and in return stipulated for payment of "a yearly rent or sum of 10s." to herself and her heirs and assignees. The deed when signed by the granter was attested only by one witness, her husband being however present at the signing. It was thereafter delivered and signed by two out of five of the trustees, also only before one witness. The granter then died, and after her death her husband added his subscription as a second witness to her signature. A second witness also attested the signature of the trustees who had already signed, and the other three trustees also executed the deed. *Held*, in a question as to the validity of the deed, it being admitted that it was subscribed by the granter and maker in presence of two witnesses—(1) That it must receive effect in terms of the 38th and 39th section of the Conveyancing (Scotland) Act 1874; (2) That the fact that it was bilateral in form did not affect its validity, although it was not signed by all the parties before the death of the actual granter, the deed being in its substance unilateral.

Observed that instrumentary witnesses do not need to be "called" as such, and it is enough that they are legitimately present, and stand by and see what is done.

The first parties to this Special Case were the trustees under the last will and settlement and relative codicil, both dated 20th October 1876, duly executed by the late Mrs Mary Ann Grant or Tener, who resided in Dundee. It was a general settlement of all Mrs Tener's estate, heritable and moveable. Mrs Tener had previously been desirous to benefit the Church of Christian Disciples at Dundee, of which she was a member, and she had erected at her own cost a building named Salem Chapel, in which religious worship was conducted. The title of this chapel remained at first in herself, but afterwards she became desirous of giving a permanent right to the chapel to the religious sect just mentioned, and she got the aid of her husband Mr Tener in putting her wishes and intentions into writing, without seeking or obtaining any advice or assistance from a professional conveyancer. The result was the framing and engrossing by Mr Tener, in accordance with Mrs Tener's instructions, and the subsequent execution by her, of a document, upon paper bearing a 15s. stamp, which was styled at its outset—An indenture, made the 24th day of October 1876, between Mrs Tener of the one part, and Gilbert Young Tickle, James Marsden, John Aitken, William Linn, and John Selbie, as trustees for the purposes therein set forth, of the second part. These trustees were the second parties to this Special Case. The indenture contained an obligation that a certain amount of yearly feu-duty should be paid on behalf of the chapel. This duty was described "as a yearly rent or sum of 10s. sterling," payable by the trustees to Mrs Tener and her heirs and assignees.

The following statement is taken from the case:—"Mrs Tener died at Dundee on 3d November 1876. At the time of Mrs Tener's death her signature to the said indenture bore to be attested by only one subscribing witness, thus—'Signed, sealed, and delivered by the above-named Mary Ann Grant Tener, in presence of' (Signed) 'James Allan, T.C., Dundee'—this witness being James Allan, one of the members of the Town Council of the royal burgh of Dundee, and one of the first parties hereto, and the capital letters appended to his subscription were the initial letters of the words 'Town Councillor.' Although Mr Allan alone subscribed as a witness to Mrs Tener's signature, Mr Tener, her husband, was also present when she signed the said indenture or deed of trust, and saw her subscribe it; but he, not thinking that more than one attesting witness was necessary, did not then subscribe as a witness. Before the document was signed by Mrs Tener it was read over to her by Mr Tener in the presence and hearing of the said James Allan, and it was thereafter taken by her into her own hands, and again read over by herself, and after she had expressed her approval it was signed by her as above mentioned. As her intention was that it should receive effect in her own lifetime, she, after it was signed and attested by Mr Allan as before stated, committed it in Mr Allan's presence to the care of Mr Tener, with instructions to get it forwarded to the trustees therein appointed. Accordingly, Mr Tener, on the following day—25th October 1876—wrote with it to Mr Tickle, who thereafter subscribed

it at Liverpool. By him it was forwarded to Mr Marsden, by whom it was also subscribed at Wigan, and who thereafter transmitted it to Mr Linn for the purpose of his subscribing it. Mrs Tener's death, however, having occurred, as already mentioned, on 3d November 1876, before Mr Linn had affixed his signature, any further subscription of the document was meanwhile suspended, and the above-mentioned signatures of Mr Tickle and Mr Marsden were made before only one subscribing witness to each of their respective signatures. Thus, as at the date of Mrs Tener's death the deed was signed and sealed only by herself and two of the trustees, each before one subscribing witness only.

"After Mrs Tener's death her husband Mr Tener being anxious to give effect to his wife's intentions, took advice, and under that advice James Allan added to his signature the words 'and perfumer, Dundee, witness,' and also wrote on the margin, with a caret after the letters 'T. C.,' the words 'Town Councillor.' By the same advice Mr Tener added, beneath the signature of Mr Allan, the words and subscription, 'and of Jno. K. Tener, late of Moree, county of Tyrone, Ireland, now residing at Salem Villas, Dundee, witness.' Following the same advice, the three trustees whose signatures had not been obtained before Mrs Tener's death, viz., Mr Aitken at Edinburgh, Mr Linn at Glasgow, and Mr Selbie at Dundee, signed and sealed the indenture before two subscribing witnesses. A second witness also subscribed to each of the signatures of Mr Tickle and Mr Marsden, upon acknowledgment by these gentlemen of their respective subscriptions. Subsequently, in January 1879, both witnesses being present, Mr Tickle acknowledged his signature to them, and they again there and then subscribed as attesting witnesses. Likewise, in January 1879, both witnesses being present, Mr Marsden acknowledged his signature to them, and they again there and then subscribed as attesting witnesses."

In these circumstances a question arose between the parties to this case as to the validity of the indenture or deed of trust. The second parties maintained that it was a deed valid and effectual as a conveyance, or at least as an obligation to convey, and that the first parties were bound in consequence of it to grant to the second parties a formal conveyance of the subjects therein mentioned. The first parties admitted that Mrs Tener intended the deed to be effectual when it was subscribed by her, but maintained that it was not habile and sufficient as a conveyance to dispone or confer any right in the subjects, nor to constitute an obligation on them as Mrs Tener's representatives to grant a conveyance or any right to the subjects; that, being drawn up in the form of an indenture or mutual contract, it was invalid by reason of its not being executed by all the parties thereto until after Mrs Tener's death; and that, in any event, the document being at Mrs Tener's death imperfect and invalid, the subsequent additions and alterations, as regards the subscription of witnesses as well as of parties thereto, were incompetent; and that on these and other grounds in law the document could receive no effect.

The questions of law for opinion of the Court were—"(1) Is the said indenture or deed of trust valid and sufficient to convey to the second parties hereto a right of property in the subjects therein mentioned, under the burdens and conditions and for the trust-purpose therein set forth? (2) Is the said document valid and sufficient to constitute an obligation on the first parties hereto to convey to the second parties hereto a right of property in the subjects therein described, under the burdens and conditions and for the trust-purposes therein set forth? (3) Is the said document valid and sufficient to any and what effect?"

Section 20 of "The Titles to Land Consolidation Act 1868," and sections 38 and 39 of the Conveyancing (Scotland) Act 1874, were referred to and founded on. Section 39 of the latter Act was as follows:—"No deed, instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect according to its legal import because of any informality of execution, but the burden of proving that such deed, instrument or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall be upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the Sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses."

Argued for the first parties—This deed was invalid, in respect (1) That the second witness was not called as a witness; (2) That he signed after the death of the granter; (3) That the granter had of her own free will, though it was not necessary, imposed the form of mutual contract upon the transaction, and this transaction was not completed till after the death of one of the parties; (4) That the deed was in the form of a lease for ever, which was incompetent. There was still required by the law of Scotland something in the way of solemnity, viz., that two witnesses should be present and sign. It was not sufficient merely to prove that the deed was executed in good faith, and was in *bona fide* the act of the granter; the witnesses must be requested to act as such, and must be present, or hear the signature acknowledged. A witness was as much a party to the attestation or solemnity of the deed as the granter himself; they were witnesses to the thing done, not to the writing alone.

Authorities—Conveyancing (Scotland) Act 1874, secs. 38 and 39; *Arnott, &c.* v. *Burt*, Nov. 14, 1872, 11 M. 62; *Veasey* v. *Malcolm's Trustees*, June 2, 1875, 2 R. 748; *Stewart* v. *Burns*, Feb. 1, 1877, 4 R. 427; *M'Laren, &c.* (*Norton's Executors*) v. *Menzies*, July 20, 1876, 3 R. 1151; *Frank* v. *Frank & Others*, March 3, 1795, reported in Bell on Testing of Deeds, &c., M. 16,824.

Argued for second parties—The 39th section of the Conveyancing Act of 1874 applied, for here the act was undoubtedly that of the granter of the deed, and all was done in good faith, and any want of solemnities could be afterwards remedied. Under the old statute all that was necessary was that the Act should be done "in presence of

witnesses." It was therefore not necessary to summon the witnesses if they were present and saw what was done. It was not a valid objection to a signature that it was filled in *ex intervallo.* (Cases quoted of *Frank* and *Arnott* v. *Burt*).

Authorities—Cases quoted *supra,* and *Smyth* v. *Smyth,* March 9, 1876, 3 R. 573; Stat. 1681, c. 85; Duff on Conveyancing.

At advising—

LORD JUSTICE-CLERK—The Special Case before us on which we have to give judgment has some features which are unusual and not without difficulty. The indenture or deed of conveyance, the validity of which is in question, is set out at length in the appendix to the Case, and the facts connected with its execution are stated fully in the Case itself as those on which the parties are agreed. I need not resume them at length. It seems that this indenture, which relates to a building in Dundee called Salem Chapel, the property of Mrs Tener, was prepared by her husband Mr Tener, without the assistance of a man of business, in 1876. Its object was to convey this building to certain trustees, who were in form parties to the indenture, and who were to hold it for payment of 10s. yearly, and to devote its use to a body of Christians to which Mrs Tener belonged, under certain conditions specified in the instrument. It was executed by Mrs Tener in the presence of Mr Tener and Mr Allan, who is one of the first parties to this case, after having been read over to Mrs Tener and separately perused by her before signing. Allan alone signed as witness, Mr Tener being under the impression that one witness only was required. The instrument bears date the 24th of October 1876, and it was thereafter transmitted by Mr Tener to Mr Tickle, the first-named of the trustees, who were parties to the indenture, and was subscribed by him and Marsden, the second of the trustees named, before the death of Mrs Tener, who died on the 3d of Nov. 1876. These signatures were at that time attested by only one witness to each.

Some time thereafter—at what time we are not told—Mr Tener finding that two witnesses were necessary by the law of Scotland, added his own name as witness to the instrument, and eventually, after a considerable interval, all the trustees named signed the deed, and their signatures were attested by two witnesses. There is no date attached to any of the signatures excepting the declaration at the end of the instrument, which may be in English form, but is certainly not correct in fact, that the hand and seal of all the parties was attached to the instrument on the 24th of October.

The question is, Whether the deed so executed is valid?

The Statute 37 and 38 Vict. c. 94, sec. 39, is in the following terms—[*reads ut supra*].

The question therefore is, Whether the deed bears to be subscribed by the granter, and bears to be attested by two witnesses subscribing, and whether if it so bears, such is the fact? Now, this deed unquestionably bears to be subscribed by the granter and maker thereof, and bears to be attested by two witnesses as regards each subscription, and the fact that it was so subscribed by the granter Mrs Tener and the attesting witnesses is proved in the most satisfactory of all ways by the concurrent statement of both parties to this case. It would seem to follow therefore that whatever may be the informalities in its execution—and they are not inconsiderable—the instrument must nevertheless receive full effect in terms of the statute.

This seems conclusive of the whole case. Had the parties not agreed in stating these essential facts, there might have been room, on a proof, for serious considerations. It is not, in my opinion, necessarily fatal to a deed that the attesting witnesses have signed after an interval, or that they have signed after the death of the granter. But these facts singly, and much more when combined, may raise a strong presumption against the truth or good faith of the deed itself; and had this deed come before us, with no dates but a false one attached to the signatures, and an interval of three years having elapsed between its signature by Mrs Tener and its ultimate completion, it would have been liable to great observation. Further, the case has the additional peculiarity that when the instrument was delivered, and at the date of the granter's death, it was in the state in which it was intended to be. But these considerations are excluded here, because the truth and good faith of the subscriptions is matter of judicial statement by both parties. It is certain that Mrs Tener did subscribe this deed, and that she did so before the subscribing witnesses, and there, in the operation of the statute, is an end of all controversy as to the formalities of its execution—a result truly in accordance with the reality and substance of the thing done.

It was argued with much earnestness that Mr Tener could not be a witness, because he was not desired by the granter to attest her signature. But there is no place for that argument in the admitted facts. No doubt subscription before a casual, an accidental, or a concealed witness may not amount to subscription as required by the statutes. But there is no such case here. We cannot doubt that if Mrs Tener had thought that two witnesses were necessary she would have desired Mr Tener to sign. He was entrusted to do all which was necessary to make the deed effectual, and as to his competency as a witness there can be no question.

It was said that this was a mutual deed, and that it was not fully completed by both parties before the death of one. It is, no doubt, in the form of a mutual indenture, but it is in substance a unilateral conveyance delivered before the death of the granter and sufficiently accepted by the signature of any of the administrators.

LORD ORMIDALE—I concur with your Lordships, or rather I cannot find any reasons which enable me to differ; for it seems to me rather a startling thing to find that in the attestation of a deed everything except the signature of the granter can be done after the granter's death. It comes to this, that I do not see how any objection could be taken to the formalities of execution (the signature of the witnesses, &c.), even though they had taken place thirty or forty years after the granter's death; but if the interpretation of the statute proposed is the proper one, I cannot see how we can find otherwise, and I am a little afraid this may open a door to the frauds which the old statutes were enacted to prevent.

The parties have now under the recent statute only the examination of the witnesses to rely on, the party founding on the deed having the *onus* of proving its validity laid upon him, and thus I am afraid a great opening is given for fraud. Fortunately there is nothing of that sort here, but I am looking to the general result of the statute.

Lord Gifford—I am of opinion that the first and second questions put in this Special Case ought to be answered in the affirmative. The third question requires no further answer.

The facts stated and admitted by both parties in the Special Case put it beyond doubt or question that the late Mrs Tener, with the full consent and advice of her husband John Kinley Tener, wished and intended by her indenture and deed of trust, bearing date 24th October 1876, to convey to and vest in certain trustees therein named the house or building called Salem Chapel, Constitution Road, Dundee, and that as a perpetual trust for the purposes therein mentioned, the leading purpose being that the chapel should be occupied and enjoyed by the congregation or church of Christian Disciples on the terms and conditions mentioned in the indenture. There is no dispute as to what Mrs Tener and her husband really intended and thought they had accomplished. The only question is, whether that intention has been sufficiently or effectually carried out in law? I think it has.

The first question relates to the legality or sufficiency of the execution of the deed—that is, Was it duly signed by Mrs Tener, the granter? The next question relates to its completion and delivery—Was it duly delivered and completed in Mrs Tener's life? or, Was it incomplete at her death and incapable of being completed thereafter? The third question relates to the form of the deed—an indenture of perpetual lease—Is this a habile form capable of receiving effect?

The first question—the sufficiency of the legal execution by Mrs Tener—involves several objections, but all of them, I think, are insufficient to deprive the deed of effect. One of the instrumentary witnesses to Mrs Tener's subscription (as well as to the other subscriptions) did not subscribe as instrumentary witness till more than two months after Mrs Tener's death, and the formal attestations of the indenture were not completed till then. It is said in argument that Mr Tener, who is the second instrumentary witness to Mrs Tener's subscription, was not specially called as such, and that he could not subscribe as witness after her death. I think these objections are ill-founded, and are excluded partly under the old law and partly under the recent Conveyancing (Scotland) Act 1874. The principal clauses of this last statute bearing upon the present case are the 38th and 39th. The 38th clause dispenses with various requisites which were previously essential to the probative character of a deed. A deed may be probative though the writer or printer is not named or designed, though the number of pages is not specified, and though the witnesses are neither named nor designed in the body of the deed, if the designations of the witnesses are appended or follow their subscriptions, and such designations may be added by anyone at any time before the deed is recorded or founded on in Court. This reduces the requisites of a probative writing to a minimum, and according to this enactment the indenture before us is, on the face of it, a probative deed. It contains all the statutory requisites of a probative deed.

But the 39th section of the Statute of 1874 goes still further, and its terms are very important. It provides against all objections arising from "any informality of execution, provided only that certain essentials are proved," and it is applicable both to probative and to improbative writings.

It is difficult to over estimate the importance of this provision. No informality whatever—no informality of execution—the words are universal—is to invalidate a deed, provided only the deed is subscribed by the granter and bears to be attested by two witnesses subscribing, and provided the two things are proved, and they may be proved apparently at any time. The two things are—first, that the deed was signed by the granter, and second, that it was signed by the attesting witnesses—that is, that the subscribing witnesses really attested its subscription by seeing the granter subscribe or receiving his acknowledgment of subscription.

Now, the real objection to the deed before us is, that one of the attesting witnesses did not subscribe as such at the time, but two months thereafter, and after the death of the granter. Now, this was irregular, and is, I think, undoubtedly an irregularity of execution, or, as the statute calls it, an informality; but then no informality of execution is to invalidate a deed which was really attested and signed, provided this is sufficiently proved. It is said that Mr Tener was incompetent either to act or to subscribe as an attesting witness, because although he saw his wife sign, seal, and deliver the deed as her final act and deed, he was not specially called as a witness, and he did not himself intend to act as such, because he thought that one witness was sufficient. I do not think that this is a good objection. Instrumentary witnesses do not require to be "called" as such as a solemnity. No formal *invocatio testium* is required—it is enough if the witnesses are legitimately present and openly stand by and see what is done. Possibly a surreptitious witness unknown to the testator, stealthily peeping through a window, or unwarrantably observing the testator from some place of concealment, might be objectionable, especially if it were shown that the testator did not intend to subscribe the deed before witnesses, and did not know that any were present, for in such case the testator's intention to execute the deed might be doubtful. But there is nothing of that kind here. Mr Tener was taking charge of the execution of the deed. He undertook to act as Mrs Tener's agent, and get the deed sufficiently attested, and the only reason why he did not sign as witness at the time was, that he thought that it was not necessary. The agent who superintends the execution of a deed is generally the most unexceptionable witness of all. The lapse of time also is sufficiently and satisfactorily explained, and it would be to defeat Mrs Tener's intention to prevent the deed from being honestly and in *bona fide* completed after her death. I think, also, that to prevent such

completion would be to deny effect to the provisions of the Statute of 1874.

But it is said the deed is a bilateral deed—a sort of contract—and that it could not be completed because some of the trustees did not accept until after Mrs Tener's death. I think this objection groundless. Whatever be the form of the deed, it is in substance a unilateral deed of grant and gift by Mrs Tener by which she gave Salem Chapel for the use of the congregation. It was a mistake in point of form in Mr Tener to call it an indenture. It was a deed poll. The trustees were not contracting parties; they were simply donees—administrators of the gift. They might accept at any time, any number of them, and even if they all had declined to accept, the gift would not have been void, but the Court would have appointed a judicial factor or other trustees to administer the trust.

But, in point of fact, two trustees actually accepted during Mrs Tener's life the final gift which she had made *inter vivos*, and which she herself by delivery of the deed had made irrevocable. I think this is enough. There was nothing to prevent the other trustees from accepting at any time, and the interval of two years before the signature of the last acceptor is finally attested is of no consequence. I think, therefore, the deed must receive effect according to its true meaning and intent, and in accordance with the admitted intention of the donor.

The Court therefore answered the first two questions in the affirmative, and found it unnecessary to answer the third.

Counsel for First Parties (Tener's Trustees)—R. V. Campbell. Agent—Alexander Wylie, W.S.

Counsel for Second Parties (Tickle and Others)—Balfour—M'Kechnie. Agent—William Archibald, S.S.C.

Saturday, June 28.*

SECOND DIVISION.

[Lord Adam, Ordinary.

GRAHAME *v.* THE PROVOST AND MAGISTRATES OF KIRKCALDY.

Property — Commonty — Encroachment — Right of Municipality to Erect Buildings on Burgh Property.

The magistrates of a burgh sold to themselves, in their capacity of police commissioners, a portion of the burgh property, on which they proposed to erect stables, &c. An inhabitant of the burgh sought interdict against this proceeding, as an encroachment upon ground which had been by the terms of the original grant from the Crown and by immemorial usage dedicated to the use and recreation of the inhabitants. Interdict granted, on the ground that upon a construction of the titles, and upon the facts as proved, these subjects were held by the magistrates for behoof of the community, but under dedication to public uses, and that they could not be dealt with in any way inconsistent with that common use and the enjoyment of the inhabitants generally.

Observed per Lord Ormidale that the case of a sale by the magistrates to a stranger who purchased in *bona fide* might have been different.

Observations per the Lord Justice-Clerk (Moncreiff) on the Burntisland case, reported in the note to *Home and Milne* v. *Young*, Dec. 18, 1846, 9 D. 293.

* Decided June 19, 1879.

This was a suspension and interdict at the instance of James Grahame, dyer, Kirkcaldy, against Patrick Don Swan and others, being the Provost, Magistrates, and Town Council of that burgh, and also Commissioners of Police under "The General Police and Improvement (Scotland) Act 1862." The complainer prayed for interdict against the respondents "from in any way encroaching upon that portion of the South Links or south commonty of Kirkcaldy which is now or was recently in grass, and which now remains or recently remained unfeued, and which extends from Burleigh Street of Kirkcaldy on the north, to the vennel called John Loudoun's Wynd on the south, and from property belonging some time to the heirs of Thomas Meldrum and other properties on the west, to the seaflood on the east, . . . and in particular . . . from encroaching upon that portion of the South Links or south commonty which is commonly named or known as the Volunteers' Green, being part of the common good of the burgh of Kirkcaldy." There was also a prayer for interdict against the erection of stables or any buildings which might prejudice the rights of bleaching, drying clothes, &c., which belonged to the inhabitants. These the complainer averred he had enjoyed for many years along with the other inhabitants. The charter of the burgh of Kirkcaldy was granted by Charles I., and dated February 5, 1644. It confirms an earlier charter granted by David II. It contained, *inter alia*, the following clause:—"Cum acris burgalibus et communi mora et lie moss et muirlands cum territorio de Kirkcaldie aliisque juribus et pertinen . . . et territorium suprascript per presentis carte nostre tenorum declaratur salinas de Kirkcaldie fore, viz., a vico vocat John Lowdoun's wynd ad orientalem pontem." From 1644 down to 1754 the subjects referred to above remained the property of the magistrates for the public purposes of the burgh. One-third at least had always been kept in grass for drying, bleaching, and recreation purposes. On 18th March 1754 the municipal authorities entered into a feu-contract with Robert Whyte, then provost, whereby in consideration of the sum of £1 Scots money instantly paid, and £34 Scots money of annual feu-duty, and in conformity with an Act made by the General Convention of Royal Burghs in July 1753, authorising the magistrates of Kirkcaldy to feu out that part "of the property, lands of the said town, called South Links, lying on the south side thereof," they disponed to him certain subjects thereon, "but under the limitations and restrictions underwritten, viz., that there shall now and in all time coming be reserved to the inhabitants of Kirkcaldy one-third part of said links in grass as at present, for drying linen clothes, allenarly, and free access thereto at all times for that end." There was a provision that certain roads be left