ARCH. CRAUFUIRD, W. S. Appellant.—*Shadwell—Keay.* No. 32.

Mrs TORRANCE and HUSBAND, Respondents.—*Adam—Buchanan.*

Stat. 10 *Geo. III. c.* 51.—*Entail.*—*Expenses.*—Held (reversing the judgment of the Court of Session), 1. That the accounts of expenditure by an heir of entail, under the above statute, must specify the particulars, and not state merely the sum total expended. 2. That the vouchers or receipts must be granted by the party performing the operations, and not by tenants who have been authorised to get them done, or had right to them by their leases. 3. That a notice given in 1810, and operations performed under it in that year, and thereafter in 1816, and when intervening notices as to other parts of the estate had been made, was not sufficient to authorise improvements in 1816; and, 4. That it is incompetent to award expenses in an action of declarator, under the above statute.

May 26, 1826.

1ST DIVISION. Lord Alloway.

By the statute 10 Geo. III. c. 51, it is enacted, 'that every 'proprietor of an entailed estate, who lays out money in en- 'closing, planting, or draining, or in erecting farm-houses and 'offices, or out-buildings for the same, for the improvement of 'his lands and heritages, shall be a creditor to the succeeding 'heirs of entail for three-fourth parts of the money laid out in 'making the said improvements.' But it is 'provided always 'that every proprietor of an entailed estate, when he intends to 'lay out money on such improvements, shall, three months at 'least before he begins to execute the same, give notice in wri- 'ting to the heir of entail next entitled to succeed to the said 'estate, after the heir of the body of the said proprietor, if with- 'in Great Britain or Ireland, of such his intention, specifying in 'such notice the kind of improvement intended, and the farms 'or parts of the estate upon which improvements are intended 'to be made, and shall lodge a copy thereof with the Sheriff or 'Steward-clerk of the county wherein the lands lie,' and 'shall 'annually, during the making such improvements, within the 'space of four months after the term of Martinmas, lodge with 'the Sheriff or Steward-clerk of the county within which the 'lands and heritages improved are situated, an account of the 'money expended by him in such improvements, during twelve 'months preceding the term of Martinmas, subscribed by him, 'with the vouchers by which the account is to be supported 'when payment shall be demanded or sued for.'

Mrs M'Mikin Torrance, the substitute heir of entail in possession of the entailed estates of Kilsaintninien and Grange, in the county of Ayr, together with her husband, in virtue of the above statute gave to Archibald Craufuird, W. S., the next heir of

May 26, 1826. entail, several notices between the years 1810 and 1817, of their intention to make improvements on the estates.

In particular, *first*, Mrs Torrance, on the 12th June 1810, with consent of her husband, intimated to Mr Craufuird, that she 'was 'to make the following additions and improvements on the farm 'aftermentioned, part of the said entailed estates, viz. On the 'farm of Laigh Grange, that she was to build and erect a new 'dwelling-house on said farm, the present one being old, incon-'venient, and in bad condition. On the farm of High Grange, 'that she intends to build some additional houses for the ac-'commodation of the farm, and particularly some houses at a 'place called Slateford. On the farm of Milton, that she in-'tends immediately to make some additional improvements 'on the houses and offices of Milton; particularly to build and 'finish a new barn, and which improvements and buildings she 'intends to begin as soon as possible.' Of this, a copy was lodged with the Sheriff-clerk, in terms of the statute.

Under this intimation, there were expended, between Martinmas 1809 and Martinmas 1810, on Laigh Grange, which was possessed by John M'Lymont, £424, 10s.; on Milton, possessed by Robert Allan, £120, 13s.; and on High Grange, possessed by Peter Galt, £77, 14s.; making altogether £622, 18s.

The account relative to this expenditure, which was recorded in the Sheriff-court books, was in these terms:—'An 'account of the sums of money paid for building houses on the 'following farms on the estate of Grange, the property of Mr 'and Mrs M'Mikin Torrance, lying in the parish of Maybole, 'and sheriffdom of Ayr, between the term of Martinmas 1809 'and the term of Martinmas 1810:—

'On the farm of Laigh Grange, possessed by John M'Lymont—

'For building a barn, per receipt, -	£159	10	0
'For building a byre, milk-house, and stables, 'per receipt, ...	265	0	0

'On the farm of Milton, possessed by Robert Allan—

'For building a barn, as per Robert Allan's re-'ceipt, ...	£103	17	7		
'For repairs on a milk-house, as 'per Robert Allan's receipt, . .	8	8	0		
'For paving the kitchen floor, 'as per Robert Allan's receipt, .	8	8	0		
				120	13	7

‘ On the farm of High Grange, possessed by Peter Galt—		May 26, 1826.
‘ For building a wright’s shop, a smith’s shop, ‘ and dwelling-house at Slateford, on the farm of ‘ High Grange, ...	77 14 0	
	‘ £622 18 0’	

The vouchers consisted of receipts from each of the tenants, and of which the following, granted by M‘Lymont, is an example:—‘ January 19, 1811.—I hereby acknowledge that I have ‘ this day received from Mr and Mrs M‘Mikin Torrance £159, ‘ 10s. for building a barn; also the farther sum of £265 for ‘ building a byre, milk-house, and stables, all on the farm of ‘ Laigh Grange, amounting in all to £424, 10s. Sterling, which ‘ barn, milk-house, byre, and stable, were built between the ‘ term of Martinmas 1809 and the term of Martinmas 1810, ‘ and the same is hereby discharged. (Signed) John M‘- ‘ Lymont.’ In the receipt by Galt, he stated that he had received the money ‘ agreeably to a clause in my lease.’

Under the same notice, the sum of £222, 12s. was expended on the same farms between Martinmas 1810 and 1811; and £162, 5s. between Martinmas 1812 and Martinmas 1813. After some intermediate notices as to other parts of the estate, £257, 0s. 9½d. were laid out under the above notice between Martinmas 1815 and Martinmas 1816. The accounts and vouchers relative to these were similar to those which have been quoted.

On the 15th January 1812, a *second* notice, similar to the first, was given, under which £162, 5s. 7d. was expended on High Grange, and the account and receipt by the tenant were expressed in a similar manner.

A *third* notice was sent on the 1st October 1812, by which Mr and Mrs Torrance intimated, ‘ that we intend to make the ‘ following improvements, alterations, and additions to the house ‘ of Grange, offices, and stables, viz. to repair and finish the ‘ garret story of the mansion-house, which has never been done; ‘ to repair the stables, and put new hacks and mangers therein, ‘ and to finish and plaster the coach-house; to erect a new shade or ‘ coal-house, and a kitchen porch, and to pave the scullery, and to ‘ repair the pediment on front door, and to put lead rones or pipes ‘ about the house and byre, and to cast and paint the outside of ‘ the house, and to put marble jambs in the dining-room, of all ‘ which we give you notice.’ Under this intimation £154 were expended in building a garden-house, and the voucher consisted of a specific account, with a receipt by Thomas King, the

May 26, 1826. person employed to do the work; but it was not subscribed by Mrs Torrance.

On the 13th of June 1814, a *fourth* notice was given of an intention 'to inclose and plant parts of the farm of High Grange 'and Meadownay, and to drain some ground in the immediate 'vicinity of Grange House.' Accordingly this was done, and specific accounts and vouchers for £49, 6s. 11d. duly recorded.

A *fifth* intimation was made on 3d December 1814, 'that I in-'tend to close and plant part of the grounds round the house 'which are in my own occupation, which will both give shel-'ter and beauty to the place;' and, in consequence, £40, 12s. 3d. were laid out, and of which the vouchers were recorded.

A *sixth* notice was given in April 1817, under which a claim was made for £62, 18s. 11d.

An action of declarator, founded on the above statute, was afterwards brought against Mr Craufuird by Mrs Torrance, with consent of her husband, stating that she had laid out £1572, 10s. 3½d., for three-fourths of which, being £1179, 7s. 8½d., she was a creditor of the succeeding heirs of entail; and concluded, 'that the said Archibald Craufuird, or the next heir 'who is entitled to succeed after the pursuer, the said Mrs 'Marion M'Mikin Torrance, shall be liable to her, her heirs, 'executors, or assignees, in payment of the said sum of £1179, '7s. 8½d, with the interest thereof, from the term when the said 'Archibald Craufuird, or the heir entitled to succeed after the 'pursuer, their right to the rents of the foresaid lands shall 'commence; and that the heirs, executors, or assignees of the 'pursuer, shall have right and be entitled to demand and recover 'payment thereof, as pointed out by the said statute, conform 'to the foresaid act of Parliament, registered vouchers, intima-'tions and extracts thereof libelled on.' Under this general claim there were embraced the several sums expended on the estate, relative to which notices had been given. There was no conclusion for expenses.

In defence, Mr Craufuird objected,

1. That the notices (with the exception of that of the 1st October 1812, relative to the mansion-house) were to ogeneral in their description of the improvements intended to be made—that, in particular, the notice of the 12th June 1810, merely stated that 'a new dwelling-house,' 'some additional houses,' 'a 'new barn, stable, byre, and other offices,' were to be erected; but that it ought to have specified distinctly the kind or description of houses which it was proposed to build, so as to show whether they were suitable to the farm or not.

2. That although it is enacted that three months notice shal

be given to the heir before the improvements are commenced, yet that (with one or two exceptions) they had been begun before the notices were sent; and, in particular, that although the first notice was served on him on the 12th of June 1810, yet it was stated in the accounts and vouchers that the improvements had been made between Martinmas 1809 and Martinmas 1810. May 26, 1826.

3. That it was incompetent, after the lapse of so long a period, and after intervening notices as to other improvements, to make those in 1816 under the notice given in 1810; and,

4. That the accounts ought to have specified the particulars which had been expended, and for what purposes, and that it was not sufficient to state generally that a slump sum had been paid; and besides they were not subscribed by the heir in possession.

To this it was answered,

1. That the statute merely required that the notice should state 'the kind of improvements intended, and the farms upon which 'the improvements are intended to be made,'—that it did not require that a specific and accurate detail of the improvements should be given, or a plan exhibited either of the houses, of the drains, or of the dykes, but merely what was the kind of improvement intended to be executed.

2. That it was an error in point of fact to allege that the improvements had been begun before the lapse of the three months, because it was proved by the documents produced that they had not been so.

3. That due notice had been given in June 1810, of the proposed improvements, and that it was not a valid objection that they had not been executed till six years thereafter; and,

4. That the statute did not ordain that a specification of particulars should be recorded, but merely in general terms, 'that 'an account of money expended by him in such improvements,' with the necessary vouchers, should be recorded; that accordingly this had been complied with; and it was not denied that the money had been so expended.

'The Lord Ordinary reported the case, in respect the ques-'tion relates to a statute now in daily operation, and the con-'struction of the clauses founded on by the objector (Mr Crau-'fuird), which are expressed in very general terms, is of the 'greatest importance, not only to every heir of entail availing 'himself of it, but to the country at large giving credit upon 'the faith of it, and this case therefore cannot be too speedily 'decided, or too generally promulgated.' On advising the informations, the Court, on the 1st December 1820,* repelled

* See Fac. Coll. No. 55.

May 26, 1826. 'the objections proponed by the defender, found that the outlay 'condescended on has been duly made and authenticated in terms 'of the act, and therefore decerned in terms of the libel, and 'found expenses due.'

The Judges were of opinion, that the act of Parliament, which was of a beneficial nature, and intended for the improvement of the country at large, ought to be given effect to upon the most liberal principles, and only required to be substantially obeyed, without a rigid and critical observance of its precise provisions; that in several respects it was impracticable to obey it literally; and that in this case it had been bona fide observed.

Mr Craufuird appealed, and having thereafter died, the appeal was revived in the name of his eldest son.

Appellant.—The directions and injunctions of the statute have not been followed out. They must be explicitly and in terminis obeyed. It is not enough, that de facto, the money may have been beneficially expended on the estate. The expenditure must be regulated by the statutory provisions; otherwise no charge is created against the succeeding heirs. It was incompetent to award expenses against the appellant in an action of declarator. The statute provides for costs being given in an action for payment against the succeeding heir, but not in an action of this kind. Besides, the summons does not conclude for expenses.

Respondent.—The object of the statute was to encourage improvements on entailed estates, not to clog the heir improving with directions so minute, and of such strict interpretation, as contended for by the appellant, and which would render the statute totally abortive. The respondents bona fide implemented the provisions of the statute, according to their sound import and meaning. The statute does not prohibit expenses being given, but is silent, leaving them to be awarded if the Court shall see cause to find them due.

The House of Lords ordered and adjudged, 'that the interlo-'cutors complained of in the said appeal be, and the same are 'hereby reversed, except as to the sum of £230, 5s. 8d., being 'three-fourths of the sum of £154, 2s. 7d., expended in building 'a garden-house at Grange House,—and of the sums of £49, 6s. '11d., £40, 12s. 5d., and £62, 18s. 11d., expended on the said 'entailed estate for draining and planting; as to which it is 'further ordered and adjudged, that the said interlocutors be, 'and the same are hereby affirmed: And it is further ordered

'and adjudged, that the said interlocutors, with respect to the 'costs thereby awarded against the appellant, be, and the same 'are hereby reversed; and it is further ordered, that the cause 'be remitted back to the Court of Session in Scotland, to pro- 'ceed further therein as is consistent with this judgment, and 'as is just.' May 26, 1826.

LORD GIFFORD.—My Lords, this is a case which was heard before your Lordships the session before last, and in consequence of the death of one of the parties, the cause abated; since which, as I am informed, the cause has been revived and sent back to your Lordships, and it now stands for your Lordships' judgment.

This was an action brought by Mrs Marion M'Mikin Torrance, and George M'Mikin Torrance, her husband, she being heir of entail of a considerable estate in the county of Ayr in Scotland, against the next heir of entail, in order to have it established that she had, in the terms of the Act of Parliament 10 Geo. 3, c. 51, properly expended very large sums, by which she became a just and lawful creditor on the said entailed estates, and of the succeeding heirs of entail of the said estates, to the amount of three-fourths of that expenditure.

By that act, which is entitled, 'an act to encourage the improvement of 'lands, tenements, and hereditaments, in that part of Great Britain called 'Scotland, held under settlement of strict entail,'—it is enacted, &c. (His Lordship here read the preamble and provisions of the statute.) By this statute the executor and assignee, or other person having right to the claim arising from money so expended, may, after the expiration of one year from the death of the heir who expended the money, require the heir next succeeding to the estate, to pay the whole, or such part thereof as is due—and not only is that enacted, but the statute also enables him, in order to prove the expenditure incurred by him, to institute an action, as it is called, of declarator, against the next succeeding heir in his lifetime, in order to have it established before the Sheriff, or, if he sees fit, before the Court of Session, in order to fix the amount of expenditure, and thereby to establish, by the judgment of the Court, the amount of the claim which he may have against him.

It is under this section of the act that this action is brought—Mrs Torrance, with her husband, contending, that having complied with the terms of the Act of Parliament, she is entitled to be declared a creditor against the succeeding heirs of entail to the amount of £1179, 7s. $8\frac{1}{2}$d., being three-fourths of £1572, 10s. $3\frac{1}{4}$d., which she says she expended in the improvement of this entailed estate. My Lords, it will be necessary for me shortly to state the facts of this case, before I propose to your Lordships the judgment.

The first intimation which she gave of her intention to make such improvements, was on the 12th June 1810, and then she gave the following notice. (His Lordship then read it.) My Lords, she says that in consequence of this notice, in the year beginning at Martinmas 1809, and ending Martinmas 1810, she expended on the farm of Laigh Grange the sum of

May 26, 1826. £424, 10s.; and on the farm of Milton and High Grange, the sum of £198, 8s.—making in all £622, 18s.; and that she lodged the proper vouchers for that expenditure.

The vouchers which she lodged were not the accounts of the persons employed in erecting those buildings and making those improvements, but receipts from the tenants, of sums in gross, which they acknowledged to have received for the buildings and other improvements. It was objected by Mr Craufuird in the Court below, and upon appeal to your Lordships, that those were not the vouchers required by this act—that the vouchers were those which could give evidence of the nature of the work done, and receipts of the sums paid; but that general receipts of £159, 10s. for building a barn,—also the further sum of £265 for building a byre, milch-house, and stables, all on the farm of Laigh Grange, amounting in all to £424, 10s.—and another from another tenant for sums laid out on the farm of Milton, possessed by Robert Allan, as per Robert Allan's receipt, £107, 3s. 7d. were insufficient, according to the terms of this Act of Parliament. There were other objections, with which I will not trouble your Lordships.

He objected also to the generality of the notice, and that it did not sufficiently appear, that the work for this sum of £682, 18s. was charged as being done after the expiration of three months from the giving of the notice. Your Lordships observe, that the party is not entitled to begin until after the expiration of three months from the notice, in order to give an opportunity to the heir of tailzie to watch the progress of the improvements.

The next claim which she made was for the sum of £222, 12s., which she said had been expended between Martinmas 1810 and Martinmas 1811, under the same notice given in 1810; and which sum was expended in erecting a dwelling-house upon the farm of Laigh Grange, building a byre on the farm of Milton, and two servants' houses built upon the farm of High Grange, at the village of Slateford. Now, my Lords, for this she produces no vouchers of the description I have stated, and which, it seems, she should have produced, from the persons employed in the work. But her account was, that she had allowed one of the tenants £100 towards the building of the house; for building a byre on the farm of Milton £62, 12s.; for two servants' houses built upon the farm of High Grange, at the village of Slateford, £60,—being in all £222, 12s.

At the time when this case was discussed, in which I also had the assistance of a noble and learned Lord (Lord Redesdale), his opinion as well as my own was, that these were not the sort of vouchers required by the Act of Parliament; and therefore we had very little difficulty in our own minds that the claim was not made out. I ought to have stated to your Lordships, that the Court below had sanctioned this claim to the full extent.

My Lords, a third claim was made for £162, 5s. 7d. expended (still under the same notice of 12th June 1810) in the year between Martinmas 1812 and Martinmas 1813; and that was for a byre and cart-shed, erected at High Grange on 11th November 1812; and for that the re-

spondent produced this voucher from Mr Galt, who was a tenant: 'Re- May 26, 1826.
'ceived from Mrs M'Mikin Torrance the sum of £162, 5s. 7d., agreeably
'to a clause in my lease for the farm of High Grange, for building a byre,
'cart-shed, &c., erected by me between Martinmas 1811 and Martinmas
'1812.' My Lords, what agreement this lady and gentleman might have made with their tenant is nothing to the heir of entail. He was entitled to have due notice, to see that the money was properly expended—and proper vouchers for the money charged, as having been laid out in the improvements; therefore, there was the same objection to this voucher as there was to the antecedent ones.

The next claim was for the sum of £154, 2s. 7d. expended in the improvements in the mansion-house and offices, between Martinmas 1812 and Martinmas 1813—that was for erecting a garden-house, near the mansion-house, at Grange; and then, for the first time, certainly the respondent produced, what appears to me a voucher within the provision of this Act of Parliament. She produced the voucher of the builder, enumerating and specifying the work done. I thought it right to take the trouble of going through these vouchers produced in the Court below. This which I now hold in my hand, is an account rendered by Thomas King, for building a garden-house, amounting to £154, 2s. 7d. I should state that Mr Craufuird, in his papers in the Court of Session, fully admitted, that for this expenditure there were proper vouchers.—I will read to your Lordships what he states in his papers below. (His Lordship then read a passage in the appellant's information, admitting that article.) It does, however, appear, my Lords, that independently of the admission that the voucher produced for this £154, 2s. 7d. was the sort of voucher which the Act of Parliament required, the notification was also in terms of the Act of Parliament; therefore it appears to me, that with respect to that sum it ought to have been allowed.

The next claim, my Lords, was for the sum of £49, 6s. 11d. for draining. The notice applicable was given on the 10th June 1814, that it was the intention of Mrs Torrance to drain the grounds in the immediate vicinity of Grange House. Of that expenditure the proper vouchers were produced—the accounts and receipts of the parties doing the work. With respect to that expenditure, there are some minute criticisms by Mr Craufuird, that there was a probability that the work was not done after notice was given, but that it might have been done before the notice. But I think, looking to the vouchers themselves, that there is nothing inconsistent with respect to the work having been done within the period specified; and as Mr Craufuird himself admits the accuracy of the vouchers, it would be hard upon this lady to reduce her claim with respect to this sum. And being of opinion that the vouchers instruct sufficiently that the work was done within the period, I think your Lordships may safely act upon that evidence, and may allow to her that expenditure.

The same, I think, applies to the next charge of £40, 12s. 5d., which sum was expended in inclosing and planting ground about the house, for which there are accurate vouchers. Mr Craufuird objects to this charge on the ground of these operations having been begun before the notice was

May 26, 1826. given, although he admits there are proper vouchers of every sixpence of the expenditure; but, my Lords, I think, upon these vouchers, I should propose to your Lordships to allow this claim.

My Lords, the next sum stands on a very different footing. It amounts to £257, 13s. 9d. expended between the year 1815 and 1816—and that is for building a feeding byre and granary on the farm of Laigh Grange. Your Lordships will recollect that the first intimation with respect to the general improvements of the farm was on 12th June 1810,—and with respect to the buildings, to which the notice referred in the year 1810, 1811, and 1812, vouchers were produced as described; and then your Lordships will find, after that year fresh notices are sent with respect to other improvements, draining, planting, and so on. But then, although from the year 1813 to the year 1816, there was an interval of three years, during which no buildings were going on, Mrs Torrance maintains, 'I have a right to say in the year 1816, I will go back to my notice 'in the year 1810. I give you no fresh notice, but refer the buildings I 'am about to erect, and other improvements, to the notice given in that 'year.' Now it appears to me, my Lords, and particularly when I find them giving an additional notice themselves in the year 1817, that it would be a very strange thing to say, 'If I gave notice in 1810—follow-'ing that notice by an annual account, as your Lordships see there is an 'annual account—having completed the buildings in 1812, and then 'never thinking of making any additional improvements, or giving any 'notice of any buildings on the farm, I shall be entitled afterwards at any 'distant period to say, I will not give you a fresh notice, but I will go 'on under the notice in 1810; and therefore what I do in 1816, I will 'charge under the notice which I gave in 1810.'—The notice in 1810 could, my Lords, hardly apply to the improvements which were made in 1816.

The last charge, my Lords, is £62, 18s. 11d. for draining under the intimation of the 26th April 1817, for which there appears to have been proper vouchers; and the present appellant himself says, 'that he is per-'fectly satisfied, from looking at the extract, that some of this work was per-'formed before the three months after the notice had expired; but to show 'that he has no wish to press any objection that may appear captious or 'critical, as has been attributed to him, he has not urged this point.' He appears to be perfectly satisfied with respect to that sum, for which there are proper vouchers, under the Act of Parliament. I should therefore propose to your Lordships to allow that sum and the others I have pointed out; and to disallow the others, to which I have directed your attention, for the reasons I have given, that there are no proper vouchers to support them.

My Lords, the Court of Session have not only fixed the heir of tailzie with three-fourths of the whole expenditure, but they fix him with costs. And, my Lords, it was contended at your Lordships' bar, that they had no authority to give costs in this case. The object of the action, your Lordships perceive, is to establish the claim of the heir in possession, against the succeeding heir of entail; and your Lordships will recollect, as I have

stated, that by the Act of Parliament the representatives of the heir of entail after his death have a right to raise an action against the succeeding heir of entail,—and if in such an action, when it is brought by the representative of the heir of entail, he should refuse to pay the money required of him under the authority of the act, and then decree shall be obtained against him, for the whole of the sum or sums of money of which he shall be required to make payment, in case it is declared that the defender be liable in full costs of suit, and if decree is not obtained for the full sum or sums of money, of which payment has been required, it shall be in the discretion of the Court to award costs of suit to either party, as the justice of the cause shall direct. In that case, therefore, the Act of Parliament has given costs against the succeeding heir of entail, if the whole claim shall be established against him; and I will state, my Lords, that the probable reason why no action is to be commenced against the succeeding heir of entail until twelve months after his death, is to give him an opportunity to see whether the expenditure had been properly incurred; and therefore it says, after you have had good opportunity of examining the vouchers—having had full opportunity to ascertain and consider whether the improvements have been made agreeably to the terms of this act or not; you ought to pay the amount, and if you do not you shall be liable in costs. But then there follows the section, which is the ground of declarator relative to proceeding at the instance of the heir in possession in his lifetime; but it says nothing at all upon the subject of costs. My Lords, I think in this case the Court of Session were not justified in giving costs. The effect of the judgment I shall take the liberty of proposing to your Lordships, will be to reverse the interlocutors, except for the sums I have mentioned. I have drawn out a sketch of the judgment, which makes the computation of those sums, and the amount for which the judgment should be pronounced against the gentleman. I should propose to your Lordships to reverse the interlocutors complained of, except as to the sums of £154, 2s. 7d. for improvements on the mansion-house,—£49, 6s. 11d. for draining,—£40, 12s. 5d. for inclosing and planting, and £62, 18s. 11d. for draining; to affirm the interlocutors with respect to those sums, but reverse them with respect to the remainder, and also as to the costs awarded against the appellant. My Lords, after a very anxious consideration of these papers, and going through the various vouchers, I am satisfied that the judgment I submit to your Lordships will not only be consistent with law, but with the justice of the case. For the reasons I have given, I think, my Lords, the interlocutor can only be supported to the extent of the amount I have mentioned.

May 26, 1826.

Appellant's Authorities.—Elliot *v.* Elliot, Jan. 22, 1793.—(15622.)—Finlayson *v.* Munro.—December 12, 1821, (1 Shaw and Ball. No. 243.)—Chisholm *v.* Chisholm, Dec. 1, 1820.

J. RICHARDSON—J. CAMPBELL, *Solicitors.*