resolutive clauses are inserted in the procuratories of resignation, shews, that the deed of 1721, not containing a procuratory, is not a tailzie of the lands but a mere obligation. This point, however, is disposed of by the case of *Skene* v. *Skene*, already mentioned. The register of the deed of 1721 contains all that is required to be recorded. The Act does not say, that a procuratory of resignation must be contained in the deed to render it valid, but only, that the irritant and resolutive clauses must be inserted in procuratories of resignation, and no authority has been cited to shew, that in order to constitute an entail, a procuratory must be inserted in the deed creating it. It is true, that until such an entail has been completed by sasine, it is exposed to the danger of being defeated by a disposition of the lands to third persons by the heir, or by an attachment by his creditors. But until the heir divests himself, or is deprived of the lands, the entail may be completed either voluntarily or by adjudication in implement.

Some stress was laid in the argument upon the circumstance of Elizabeth having been a substitute in the original deed of 1721, and being made institute in the deed of 1728. It was contended, that this was such a deviation from the former entail, (the fetters of that entail no longer applying to her,) as to shew, that the deed of 1728 constituted a new and original entail. But this argument appears to be unsound ; and Lord Curriehill, who adverts to it, gives instances to shew, that Elizabeth, although advanced in her position in the entail, is still subject to its conditions in her original character of heir of entail.

It appears to me, therefore, that the appellants have failed to establish any satisfactory ground of objection to the interlocutor appealed from ; that the deed of 1721 was the original tailzie duly registered under the Statute of 1685 ; that the whole object of the deed of 1728 was to complete the imperfect title under the former deed by feudalization ; and that this was ultimately effected by the charter which was expeded by George Skene the heir of Elizabeth, which proceeded upon the procuratory contained in the deed of 1728. I agree, therefore, that the interlocutor ought to be affirmed, and the appeal dismissed with costs.

Interlocutors affirmed with costs.

For Appellant, Theodore Martin, Solicitor, Westminster. — *For Respondent*, Connell and Hope, Solicitors, Westminster.

APRIL 16, 1863.

EARL OF KINTORE, *Appellant*, *v.* LORD INVERURY and Others, *Respondents.*

Entail—Fetters—Defective Irritant Clause—Words of Reference—*A deed of entail in the irritant clause specified some specific acts, and ended with the words "or any acts contrary to this entail."*

HELD (affirming judgment), *That these words impliedly included the contracting of debts, and therefore the entail was not defective.*

Another deed in the irritant clause ended with the words "or in any one of the several particulars above mentioned."

HELD (affirming judgment), *That this impliedly included a particular left out in the irritant clause itself, and therefore the entail was not defective.*[1]

The irritant clause in the deed of entail under which the Earl of Kintore held the estate of *Kintore* was thus expressed :—"And if the said William Lord Inverury, and the other aires male or female named in the taillie, or their aires, shall contravein the premises, then, and in that case, all the saids venditiones, alienationes, dispositiones, infeftments, alterationes, infringements, bonds, tacks, obleidgements, and all other crymes, treasones, deeds, and acts done in the contrair of this present taillie and provision, shall be null and voide in themselves *ipso facto* without the necessity of any action or sentence of declarator thereupon."

The irritant clause in the deed of entail under which the Earl of Kintore held the estate of *Haulkerton*, was as follows :—"Declaring hereby, that if the said Anthony Adrian Earl of Kintore, or other heirs male of the body of the said deceased Anthony Earl of Kintore, or any of the other heirs or members of entail above mentioned, substituted to them, shall act and do in the contrary with respect to altering the order of succession, selling or contracting debts, granting leases, suffering adjudications to be deduced, or in any one of the several particulars above

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[1] See previous reports 23 D. 1105 : 33 Sc. Jur. 554 ; 661. S. C. 4 Macq. Ap. 520 : 1 Macph. H. L. 32 : 35 Sc. Jur. 455.

mentioned, then, and in that case, all and every one of such acts and deeds, with all that shall happen to follow, or might be otherwise competent to follow thereupon, shall be *ipso facto* void and null, and of no force, strength, or effect, in the same manner as if the said acts and deeds had not been done, acted, or committed."

The Court of Session held both clauses to be effectual, and the respective entails to be valid.

The pursuer appealed, maintaining in his case, in regard to the Kintore deed of entail, that the judgment of the Court of Session should be reversed for the following reasons :—1. The prohibition in the prohibitory clause of the deed of entail against the contraction of debt is not fenced by an irritant or resolutive clause. 2. The irritant clause is framed on the principle of enumeration, and contraction of debt is not embraced within the enumeration. 3. The general words in the irritant clause following the enumeration, do not apply to, and cannot be held to include, any of the cardinal prohibitions or acts expressly prohibited in the prohibitory clause. 4. The said general words refer and apply to the general words of prohibition contained in the prohibitory clause, which are additional to and exclusive of the cardinal prohibitions.

In regard to the Haulkerton deed of entail, the appellant argued that the judgment of the Court of Session should be reversed for these reasons :—1. The prohibition in the prohibitory clause against disponing is not fenced by an irritant clause. 2. The irritant clause is framed on the principle of enumeration, and "disponing" is not embraced within the enumeration. 3. The entailer must be held to have undertaken to enumerate the acts of contravention intended to be irritated, and to have trusted to the completeness of the enumeration for the efficiency of the irritant clause. 4. The defective enumeration cannot be supplemented by general words occurring at the close of it. These general words apply only to the particulars contained in the irritant clause itself, and cannot be extended to the whole prohibitions contained in the prohibitory clause.

The respondents in their case supported the judgment, with regard to both entails, on the following grounds :—1. The entail of the estate of Kintore formed a valid and effectual entail, in terms of the Act 1685, c. 22 ; and, 2. The appellant's objections to the irritant and resolutive clauses contained in the entail, and in the relative contracts of excambion, were groundless and untenable.

Solicitor General (Palmer), and *Anderson* Q.C., for the appellant.—1. As to the Kintore entail, the irritant clause being framed on the principle of enumeration, and not including all the particulars, the entail was void. The rules of construction are all framed to favour liberty, and to lean against the validity of the entail—*Bruce* v. *Bruce*, 4 Paton, 231 ; *Rennie* v. *Horne*, 3 S. & M'L. 142 ; *Murray* v. *Murray*, 4 D. 803 ; *Dick* v. *Drysdale*, 14th January 1812, F.C. ; *Cunyngham* v. *Cunyngham*, 14 D. 636 ; *Scott* v. *Scott*, 18 D. 168. 2. As to the Haulkerton entail, the irritant clause was also framed on the principle of an enumerative clause ; and, being defective, the entail was void—*Russel* v. *Russel*, 15 D. 192 ; *Fairlie* v. *Cuninghame*, 19 D. 596.

Rolt Q.C., and *Neish*, for the respondents.

LORD CHANCELLOR WESTBURY.—It has been settled by a long series of decisions, that the restrictive clauses in deeds of entail must receive a strict interpretation, so that if the words taken *per se* admit of a grammatical construction which is in favour of liberty, that construction must be preferred. In addition to this general principle, some minor rules of interpretation have been adopted. Thus, if to general words special words are added, the rule *specialia derogant generalibus* has been applied, and the general words have been limited to the things denoted by the special words of addition ; and if, on the other hand, words of general comprehension are added to special words denoting particular things, the general words are confined in their extent, and reduced to signify things *ejusdem generis* with those that are properly denoted by the special expressions.

The application of these rules has been so frequent in the decided cases, that they have given rise to technical denominations of clauses framed on a principle of reference, and clauses framed on a principle of enumeration. (1.) If to a prohibitory clause, stating distinctly various things that are prohibited, there be added an irritant or resolutive clause, which, beginning with general words of reference, proceeds to particularize or enumerate some only of the things prohibited, then the concluding words of the clause declaring the irritancy or forfeiture are in construction confined to the things specified or enumerated. Of the application of this rule the leading examples are the *Tillicoultry* case, *Bruce* v. *Bruce*, and the cases of *Ballylusk Entail* and *Gala* and *Banchory Entails*. (2.) If to a prohibitory clause having numerous prohibitions, there be added an irritant or resolutive clause which makes a repetition of some of the things prohibited, and concludes with general words *not being words of reference*, then, in conformity with the rule I have stated, the special words form the *termini* within which the adjected general words will be confined, and the clause fails equally upon the principle of defective enumeration. On the other hand, if an irritant or resolutive clause be framed simply on the principle of reference, there can be no objection to its validity, for *verba relata inesse videntur*, and the whole of the prohibitions are by the reference repeated.

The peculiarity of the present case of the Kintore entail is, that the operative part of the clause

of irritancy, after enumerating some of the things prohibited, concludes with general words, *being words of reference*, which therefore have the effect of adding to the things enumerated all other matter contained in the prohibitory clause, but not enumerated, as effectually as if they had been particularly mentioned instead of being included by being referred to. Concluding general words being words of reference to things previously mentioned, are equivalent to a repetition of the things so referred to, and the effect is the same as if everything prohibited, which is not enumerated in the first part of the clause, had been expressly mentioned in the concluding portions. In my judgment, therefore, the objection to the validity of this entail, which rests entirely on the supposed defect in the clause of irritancy, is not well founded, and the judgment in the Court below ought to be affirmed.

With respect to the *Haulkerton entail*, the same *ratio decidendi* applies, as I have already expressed, with reference to the Kintore entail. It is impossible, consistently with the rules of grammatical construction, to hold, that the cardinal words, which occur in the clause of irritancy in this entail, namely, "or in any one of the several particulars above mentioned," can be confined to the things which immediately precede, and which are stated in the disjunctive, and governed by the words "with respect to," namely, with respect to altering the order of succession, selling or contracting debts, granting leases, suffering adjudications to be deduced. And if this be so, it follows that the words I have called cardinal words must refer to the other particulars mentioned in the prohibitory clause, and that the case also is one of a clause of irritancy containing a partial enumeration followed by words of general reference, which, for the reasons given in the judgments in the Courts below, appears to me to be good. In my judgment, therefore, the interlocutor in this case also ought to be affirmed.

LORD WENSLEYDALE.—My Lords, these two cases come before your Lordships upon appeals from two judgments of the First Division of the Court of Session—one in an action to declare void the fetters of a tailzie of the estate of Kintore, the other of a different tailzie, that of the estate of Haulkerton, each on account of a defect in the irritant clause; and the question in each case is, whether that clause is void. The Lords of the First Division, with the exception of Lord Deas, who was of a different opinion, held, that both the tailzies were valid, though they all considered the questions of some nicety and doubt. Sitting in a Court of Appeal, we ought not to reverse a judgment unless we are quite satisfied that the decision was wrong; and I must say, after much consideration of the questions, that I am far from coming to that conclusion; on the contrary, my impression is, that the decision was right. The objection in the case of the Kintore entail is, that the prohibition contained in the prohibitory clause of the deed of tailzie against the contraction of debts is not fenced by a proper irritant clause.

That in the entail of Haulkerton is, that the prohibition contained in the prohibitory clause against disponing is not fenced by a proper irritant clause.

The objection to each tailzie, if well founded, undoubtedly avoids it altogether. The question then is, whether both or either of the objections is well founded? It seems to me neither is. If, in deciding these questions, we had only to consider, first, what the meaning of the maker of the tailzie was to prohibit as expressed in the terms of the deeds according to the ordinary rules of construction of written instruments, and then, whether he had properly fenced that prohibition by irritant and resolutive clauses, without being bound in that construction by any technical rule peculiar to entails, I do not feel that there would be any difficulty in deciding these cases in favour of the respondents. What the language, according to its natural and ordinary construction, means, seems to me not to be matter of doubt. It is clear, that the maker of the entail meant to prohibit everything done in contravention of each tailzie, though he uses different language in each instrument. If the case, then, were governed by the ordinary rules of construction, there would not, I think, be any question as to what the decision ought to be. But there are authorities which lay down, that there is a different rule which is to govern the construction of deeds of entail, and by those authorities we are bound. One is, that entails are *strictissimi juris*, and the prohibitory, irritant, and resolutive clauses must be clearly and distinctly expressed, and if a deed of entail is reasonably capable of two constructions, one of which prohibits the free disposition of the estate, and the other does not, the presumption is in favour of freedom. This is the law frequently laid down, and particularly by LORD CAMPBELL, very clearly and distinctly in the case of *Lumsden* v. *Lumsden* (2 Bell's App. 104). If an expression in an entail fairly admits of two meanings, both equally technical, grammatical, and intelligible, that construction must be adopted which destroys the entail, rather than that which supports it. But this rule does not authorize you to put on any expression a forced or unreasonable and ungrammatical construction in order to defeat the entail. You must first construe the instrument according to its fair meaning, and if that leaves two courses open, freedom of disposition must prevail.

Another rule which has been derived from cases, and which is by no means unreasonable, is, that if the maker of the tailzie undertakes to enumerate and specify with particularity in the irritant or resolutive clause, those acts which he intends to create forfeiture, and uses general words in connexion with them, those general words ought not to be extended in their meaning

beyond the enumerated acts. This appears to me to be a rule of good sense, and very intelligible.

None of the cases cited in the Court of Session, and at your Lordships' bar, in which the application of that rule is exemplified, are in the form of words used precisely in point, though they give examples of the application of a principle of construction by which we are bound.

We have then to apply these rules to the cases which we have to dispose of. To begin with the Kintore entail, to which the last mentioned rule is said to apply, and upon the supposed application of which the objection seems to rest, I must own, that I think it has really no application. The prohibition in that tailzie is not, as it seems to me, founded on the principle of enumeration. That principle applies to a case where the maker provides, that if any heir shall contravene the entail by doing certain specified acts particularly described, then superadded general words are limited by the context. But here he begins, in the first part of the clause, by expressly providing for the case of *every* contravention of the previous provisions, and he points out the consequences by the avoidance of acts done in particular, and also in general terms. In this case, it seems to be clear, that the maker meant to prohibit every contravention of the entail; and no established rule of construction, properly understood, seems to me to stand in the way of our giving what we think to be the true construction of the words used.

I must confess, that I agree with the Lord President and Lord Ivory, that this clause does not fall within the description or principle of an enumeration clause as properly understood, which is, that the enumerated defaults are to be considered as the only faults provided for, the added general words being only applicable to things of the like character. Here the general prohibition cannot, I think, be doubted. I am of opinion, therefore, that the irritant clause in the Kintore case is good and valid, and the tailzie good.

The objection to the Haulkerton entail does not seem to me to fall within the objection of the clause being enumerative. In the view I take of this case, no great difficulty appears to me to arise. The material clause is as follows :—" If the said Anthony Adrian, Earl of Kintore, or any of the other heirs or members of entail above mentioned substituted to them, shall act and do in the contrary with respect to altering the order of succession, selling or contracting debt, granting leases, suffering adjudications to be deduced, or in any one of the several particulars above mentioned, then and in that case, all and every one of such acts and deeds, with all that shall happen to follow, or might be otherwise competent to follow thereupon, shall be *ipso facto* void and null, and of no force, strength, or effect, in the same manner as if the said acts had not been done, acted, or committed."

If after the acts enumerated, altering the order of succession, selling or contracting debts, etc., there had been added only the words " or the like," or " or otherwise," it might have been successfully contended, that the irritancy could not be further extended; that it must be confined to things *ejusdem generis;* and, consequently, that the irritant clause did not include a disponing. But according to the natural, ordinary, and grammatical construction, the clause applies to render void the violations of the entail not merely in the named particulars, but the several particulars *before* mentioned. The particulars before mentioned in the ordinary and usual mode of construction mean those *before* the enumeration from which it is distinguished; those in the earlier part of the entail, and the prohibitory clause immediately before, includes " disponing." This word is clearly, as it seems to me, introduced by reference. You cannot, without doing violence to the ordinary rules of grammatical construction, insert, instead of these words, the words " or the like " with the last enumerated acts. It seems to me, that those words must be read as purposely extending the irritancy to all the prior prohibited violations of the tailzie, including the disponing.

I concur, therefore, with the great majority of the Lords of Session, and recommend that this judgment should be affirmed.

LORD CHELMSFORD.—If there were no decided cases in the way of the construction of the fettering clauses of these entails, there would be no great difficulty in construing them according to the apparent intention of the granter. But the hesitation which I have felt in agreeing with the opinions of the majority of the Judges of the Court of Session, has arisen from an apprehension, that they were not to be reconciled with some previous decisions which were referred to in the course of the argument.

It seems to be agreed, that if the words of a deed are capable of a construction which will have the effect of freeing an estate from the fetters of an entail, this construction, strict in itself but liberal in its effect, ought to be adopted; and all the cases establish, that if the fettering clauses are framed upon the principle of enumeration, the clearest general words must be used to manifest the intention to extend the clauses beyond the particulars enumerated. It was contended, indeed, by Mr. Anderson, in his argument for the appellants, that if the entailer has once resorted to enumeration, no general words afterwards used, though obviously comprehending more than the enumerated particulars, can extend the force of the irritant and resolutive clauses beyond the acts particularized. But no authority was adduced for such a narrow principle of construction, which would have the effect of tying an entailer down to one particular mode

of expressing his intention, and of rejecting words from the deed which are capable of, and therefore entitled to, their appropriate application.

In the Kintore entail the question arises upon the irritant clause. In the prohibitory clauses, amongst a minute and specific detail of prohibited acts, is expressly included "the contracting of debts, and giving bonds and obligations therefor." It is contended on behalf of the appellants, that there is nothing in the irritant clause which is applicable to this prohibition.

The irritant clause is in these words: "and if the said William Lord Inverury" "shall contravein the premises, then and in that case all the said venditiones, alienationes, dispositiones," and so on, and all other deeds "and acts done in the contrair of the present taillie and provision, shall be null and voide in themselves, *ipso facto*, without the necessity of any action or sentence of declarator thereupon."

In this clause connecting itself closely with the preceding prohibitory clause by the words "and if," the word "premises" must mean all those things just before mentioned and intended to be prohibited; and then follows not an enumeration of the particular things contained in the prohibitory clause, but general words descriptive of the deeds or other instruments by which the prohibited things may be accomplished, or of the acts which would be contrary to the prohibition, concluding with the words "all other deeds and acts done in the contrair of this present taillie and provision." This clause is not framed upon the principle of enumeration, as in *Bruce* v. *Bruce*, where the words of the resolutive clause were,--"It is provided and declared, that the said James Bruce, and the other heirs of tailzie, who shall contravene and incur the said clauses irritant, or any of them, either by," etc., (then enumerating not all the prohibited acts,) "that then, and in any of the said cases, the right of succession should be forfeited." Or as in *Rennie* v. *Home*, where the words were,—"In case the said Archibald Hill, or any of the heirs of tailzie before mentioned, shall contravene or fail in performing any part of the premises particularly by," etc.; then followed an enumeration of particulars ending with the words "or shall contravene or fail in any part of the premises." As the same general words in the beginning of the clause had been qualified by the word "particularly" which introduced the enumeration, the repetition of them in the latter part of the clause was hardly susceptible of a more extensive meaning.

The case which at first sight appears to be the most difficult to distinguish from the present is that of *Scott* v. *Scott*. But there also the irritant clause was framed upon the principle of enumeration of the prohibited acts, and one of the prohibitions as to altering the order of succession was not irritated. If the irritant clause in the present case had been enumerated, the case of *Scott* v. *Scott* would have been a decisive authority.

Although the distinction between the clause in question, and that in each of the other cases to which I have referred, may seem to be narrow, yet it is capable of being accurately defined. The introductory words of the irritant clause in this case can be interpreted in no other manner than as applying to all previously expressed prohibitions in the clause immediately preceding. The subsequent words are not intended to draw out in detail and particularize what had been generally expressed, but in the most general and comprehensive terms to describe every deed or instrument which might be executed, and every act and thing which might be done in contravention of the prohibitions, or to effect the acts prohibited. And the general words "all other acts and deeds" at the end of the clause embrace everything in violation of the prohibitions which had not been specifically included in the previous description.

I agree that the interlocutor as to this entail should be affirmed.

The Haulkerton entail appears to me to run even closer to the previous decisions than that of Kintore. The majority of the Judges of the Court of Session proceed upon the ground, that the words of the irritant clause in this entail, "or in any of the several particulars above mentioned," cannot be applied to the irritant clause itself, on account of their grammatical construction, and also because they would then have no practical effect. For when it says,—"If the Earl of Kintore shall do in the contrary" with respect to certain enumerated things, and then adds, "or in any one of the several particulars above mentioned," if the words above mentioned refer to the particulars just before enumerated, they are wholly superfluous and unnecessary.

Lord Deas, who differed from the other Judges, said,—"If there be two ways of fairly and reasonably reading the clause, the one of which limits these words 'or in any one of the several particulars above mentioned' to the particulars in the irritant clause itself, and another which would extend them to all the particulars in the previous parts of the deed, the rule of strict construction would oblige us to take that reading which is not favourable to the entail." It may be doubted, however, whether there can properly be said to be two ways of construing words in a deed, if in one way they would have a practical effect, and in the other way would be wholly inefficacious. But then, again, if the right construction in favour of unfettering entails is the rule to be followed, it may be asked why the words in question may not be regarded as an instance of repetition not uncommon in deeds by way of enforcing the previous enumeration of prohibited acts. We have seen, that, in the case of *Rennie* v. *Horne*, the words "or shall contravene or fail in any part of the premises," following an enumeration, were not allowed to extend the clause beyond the particulars previously enumerated, and were thus disabled of all effect.

It seems to me hard to reconcile the present case with the previous decisions; but I do not feel any doubts sufficiently strong to induce me to differ with the opinions of my noble and learned friends, who think, that the interlocutor as to this entail ought to be affirmed.

Interlocutors in both appeals affirmed with costs.

For Appellant, Loch and Maclaurin, Solicitors, Westminster.—*For Respondents*, Dodds and Greig, Solicitors, Westminster.

APRIL 17, 1863.

ANGUS MACKINTOSH, *Appellant*, *v.* HUGH FRASER, DR. GLOVER, and DR. T. G. WEIR, *Respondents.*

Reparation—Wrongous Detention—Insanity—Agent and Client—Malice and Want of Probable Cause—Issues—*In an action of damages against the law agent of the pursuer and his family, for wrongfully causing him to be confined in a private madhouse, under a warrant alleged to be wrongfully obtained by the agent, on an application in name of the pursuer's mother, and there being no allegation of irregularity in the proceedings:*

HELD (affirming judgment), *That it was not necessary to aver malice and want of probable cause in the issue, as want of due inquiry and examination would be a good cause of action.*

Reparation—Privilege—Agent and Client—Wrongous Detention—1. *An agent for a party, who takes steps to get him confined in a lunatic asylum as insane, is not liable in damages, unless he knew him not to be insane, or interfered officiously and recklessly, and without due inquiry.* 2. *Medical men, being qualified practitioners, who, after due examination, believe that a party is insane, and grant a certificate to that effect, with a view to the party being confined in a lunatic asylum, are not liable in damages, although the party should prove to have been sane.*

Process—Jury Cause—New Trial—Lunatic—Counsel—*A new trial is not granted because counsel refused to examine a witness whom the client wanted to be examined; or because the client, insisting on addressing the jury, was prevented by the Court from doing so.*[1]

The pursuer appealed, maintaining in his case, that the judgment of the Court of Session should be reversed, for the following reasons:—1. The first issue ought to have been limited to the inquiry, whether the defender, Hugh Fraser, did wrongfully confine and detain the appellant, or cause him to be confined and detained. 2. The state of mind of the appellant ought not to have been in terms a subject of inquiry in the issue, inasmuch as the appellant might well have been entitled to a verdict, even though it should be proved, that he was of unsound mind at the time. The appellant's state of mind could only become *essential* as a defence; and evidence on the subject, either in answer to the action, or in reduction of damages, would have been admissible for the defender under the form of issue contended for by appellant. 3. The said first issue throws on the appellant the burden of proving, that he was not insane at the time, whereas, if the state of mind of the appellant ought to have been in terms a subject of inquiry in the issue, the burden of proving insanity ought to have been thrown on the defender. 4. For similar reasons, the second issue ought to have been as against the defenders, George Glover and Thomas Graham Weir to the same effect as the first issue, or, at all events, the second issue ought to have been limited to the inquiries whether the defenders, George Glover and Thomas Graham Weir, wrongfully granted the certificate, and ought not to have thrown on the appellant (as it did) the burden of proving, that they did so without due inquiry and examination, or of proving, that the appellant was not then insane, nor in such a state of mental derangement as to require confinement in a lunatic asylum. 5. The issues adjusted by the Court for the trial of the cause were not the proper issues applicable to the case. 6. The appellant was not, as he ought to have been, under the circumstances set forth in the affidavit presented by him to the Court, examined as a witness for himself; and the jury were thus prevented from hearing the most important evidence in the cause, and were told by the presiding Judge to consider the fact of the appellant's non-examination to be an important circumstance against his case.

The respondents, Mr. Fraser and Dr. Glover, supported the judgment on the following grounds:—1. The first three interlocutors appealed against, being interlocutors adjusting, approving of, and authenticating, the issues, were pronounced upon the motion of the appellant

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[1] See previous report 21 D. 783: 22 D. 421: 31 Sc. Jur. 309, 761: 32 Sc. Jur. 187. S. C. 4 Macq. Ap. 913: 1 Macph. H.L. 37: 35 Sc. Jur. 457.