

building, continuing for greatly longer than forty years, any assertion of such right in the subject was negatived, and a mutuality of right and interest fully admitted. It could not be dealt with except as a march fence. The state of possession has been, I think, most satisfactorily proved to have been in accordance with the line of the dyke, the Lednathie sheep or cattle pasturing up to the one side, and the Dalinch sheep or cattle pastured up to the other. There was no passage formed for the Lednathie sheep going through it to the ground beyond. The evidence arising from the very existence of such a dyke points to its use as a division of pasture ground. It certainly formed the march (in pasturing) for, from the time when the inclosed ground ceased to contain wood capable of being injured by pasture, the dyke was certainly used as the fence between the grounds in that position.

I think it probable that the dyke was originally built in its actual line with a view to the inclosure of the ground to the eastward for plantation, and it may be that the line was chosen with a view to its greater ease of construction in the hollow and along the curve; but the dyke did, according to my view, unquestionably become, and for greatly more than forty years remain, the boundary wall of the two estates; and I cannot see ground for withholding effect to a possession clear and unequivocal in its character in Colonel Ogilvy, coupled with a total cessation of use in the proprietor of Lednathie.

The result is, that the straight line has been departed from up to the end of the dyke, and we have carried on the march from that point.

If the defenders are right in their view of the proof, the cases are identical, for they contend that they have proved a possession as clear and as continuous in reference to the portion above the road and up to the well as in reference to the portion of the boundary below the road. I do not think that the defenders have made out that proposition in point of fact. There is a good deal of strong evidence as to the stripe being reputed as the march, and as to possession in accordance, but, on the other hand, the pasturage on that hill side, with no fence to divide the one portion from the other, does not seem to me to be sufficient to establish a right which demands clear and unequivocal possession, on the one hand, and absolute cessation of possession, on the other. I state the import of the proof as it presents itself to my view, without citation of special passages; the result is, that the march of the stripe is not made out to my satisfaction.

Failing that march, we have, I think, to deal with the case upon the footing of following the line as nearly as we may consistently with the conclusions come to in reference to the lower portion of the boundary. We have ascertained a point from which we are to start in our course towards the other defined point in the line of march. The line starting from the end of the dyke will go straight to the well, and thus, as it appears to me, the true march will be ascertained.

We should therefore, I think, find that the dyke forms the boundary between the well and the road; that a line from the point at which the dyke touches the road straight up to Peddie's Craig well, is the line in that portion of the boundary; and that the ridge, as wind and water shear, is the line of boundary above, and with these findings we should remit to a man of skill to lay down the march,

The other Judges concurred.

A remit accordingly was made to a man of skill to fix the line.

Agent for Pursuer—James Webster, S.S.C.

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

Wednesday, November 13.

FIRST DIVISION.

MILNE, PETITIONER.

Judicial Factor—Petition—Competency. A petition for recal of factory, the appointment having been made by the Lord Ordinary—*Held* competently presented to the Inner House.

This was a petition for partial recal of a factory, so far as regarded certain heritable subjects mentioned in the petition, and for exoneration and discharge of intromissions *quoad* these subjects. The appointment of factor had been made by the Lord Ordinary.

It was doubted whether the petition was properly presented in the Inner-House.

BURNS, for petitioner, in support of the competency, cited *Lawson*, 19th December 1863, 2 Macph., 355; *A. B.*, 20th July 1861, 33 Jurist, 686; *White*, 17th July 1860, 22 D., 1473; *Noble*, 25th June 1859, 21 D., 1053.

The Court ordered intimation and service.

Agents—Henry & Shiress, S.S.C.

COURT OF JUSTICIARY.

Wednesday, November 13.

ALEXANDER v. LINDSAY.

Jurisdiction—Customs Consolidation Act 1853—Exchequer Act—Justice of the Peace—Court of Review—Relevancy. In a suspension of a conviction in a Justice of Peace Court, under the Customs Consolidation Act 1853, on the ground that the information and summons on which conviction proceeded did not specify time and place of offence charged, *Held* that the Justiciary Court had no jurisdiction, and that the Court of Exchequer was the proper Court of Review.

An information was lodged against John Alexander, before a Justice of the Peace of the county of Kincardine, in these terms:—"Be it remembered that Henry Lindsay, an officer of customs, under the direction of the Commissioners of Customs, informs me, James Christian, Esquire, one of Her Majesty's Justices of the Peace in and for the county of Kincardine, that John Alexander obstructed one William Finnigan, employed for the prevention of smuggling, contrary to section 247 of 'The Customs Consolidation Act 1853,' whereby the said John Alexander has become liable to be imprisoned as is therein directed."

A summons, containing an exact copy of this information was served upon Alexander. After due trial before three Justices at Stonehaven, on 29th October 1867, Alexander was convicted, the conviction and warrant of imprisonment being in these terms:—"To Henry Lindsay, an officer of customs, and to the gaoler or keeper of the prison at Stonehaven in the county of Kincardine. John