their right of way was disputed. The use by the public was open and notorious; the gate was never used to stop the public traffic. It will not be enough to allow the traffic to flow unchallenged all day and then merely to shut the close now and then at night, when no one requires to use it. If the public claim and are allowed free passage, it will not do merely to stop children who are annoying the residents by playing in the close. Effectually to interrupt a public use it is the public that must be stopped, and not children; for although it may be true that, if there be a right of way at all children have as much right as adults, still children have not the same means or power to vindicate their rights, and their submitting to exclusion will not affect or bind the public.

Acting as a juryman, therefore, I take the same view of the alleged interruptions that the Lord Ordinary has done. I think they are not sufficient to prevent a verdict that for more than forty years the public have had the uninterrupted use of the right of way.

I am also much moved by the evidence that the paving of the close and the upholding of the roadway in repair has been in the hands of the Commissioners of Police. It is true that the complete paving of the close was only in 1867, but it seems sufficiently established that for many years before the whole repairs were undertaken and carried out by the police authorities at the expense of the public. Since 1850 the close has also been drained at public cost, and as a public place. Facts like these give a colour and a character to the use of the road as a passage which greatly strengthens the case of the Commissioners.

While, however, I am not able to concur in the judgment now to be pronounced by the Court, I have great satisfaction in the very full and careful discussion and consideration which the case has received. I quite understand and appreciate the view which the majority of your Lordships have taken, and I admit the force of the consideration by which it is supported. In a question of considerable local importance and interest I think the parties and the public of Dundee have every reason to be satisfied that the case had been most carefully, fairly, and fully tried.

LORD MURE—I have little to add to what has been already said. I concur in the opinion of Lord Deas. My only difficulty is whether a good deal of the proof does not refer to a period beyond the 40 years. After that we have the stoppage of Mrs M'Leish and of school children, but not so much stopping of the public.

The question then arises, was this stopping of the last 40 years such as to stop the public? Is there distinct evidence of interruption of the public for 40 years prior to this action? From 1835 to 1846 Baxter had a key of the door in the close from Mrs M'Leish. Mrs Fyal confirms this from 1830 to the present time. Mrs Watson gives the same evidence with regard to the time from 1840 to 1865.

On the other hand, we have the total failure on the part of the defenders to prove the use of the close as a thoroughfare.

LORD JUSTICE-CLERK—My Lords, after the full and exhaustive statement of Lord Deas it is quite unnecessary to detail the grounds of my entire concurrence with his opinion.

I agree with Lord Gifford that this is a jury question, and if it were the facts alone we had to deal with, I might lean to the opinion of the Lord Ordinary. But it is the effect and the quality of the facts set forth that present the important matter for consideration.

My Lords Ormidale and Gifford said that this close had been used by the public for more than 40 years. But did they use it as a thoroughfare to which the public had right? I think not. On the contrary, we have constant assertion by the owner of the *solum* of his right to deal with the close as he pleased. It is therefore of no moment that he allowed the public to pass through during the day and stopped them at night, so long as they passed or were stopped at his will.

The proprietor of a passage need not tell the public why he shuts the door at night and leaves it open in the day time, it is enough that he asserts his right. If I thought that the evidence of public use went back to 1809, *Harvie's* case would apply, but I think the evidence is against such use.

The property was in Butchart, and in building the close he made provision for excluding the public, and this exclusion lasted for more than 40 years.

Your Lordships will therefore recall the Lord Ordinary's interlocutor, and grant decree in terms of the conclusions of the summons.

Counsel for Pursuer—Dean of Faculty (Clark) Q.C. and Balfour. Agents—Lindsay, Paterson & Hall, W.S.

Counsel for Defender—Solicitor-General (Watson) and Asher. Agents—Leburn, Henderson & Wilson, S.S.C.

Friday, March 5.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

JAMES S. ROUGH *v.* PETER MOIR AND PATRICK BIRNIE.

Sale—Warranty—Mercantile Law Amendment Act, sec. 5.

In a case where a horse, sold by public roup, had been described in the sale catalogue by the seller as having been "regularly driven in single and double haness," *held* that this amounted to a warranty that it was fit for those purposes.

Rough, the pursuer of this action sent a horse to be sold by public roup by the defender Moir, who was an auctioneer, and by Rough's instructions it was described in the catalogue as having "been driven regularly in single and double harness." It was bought by the other defender, Birnie, who, on trying it, at once returned it as being disconform to the description, and received back the price which he had paid. It was re-sold by Moir at a slight reduction, and Rough raised this action to recover the price.

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—

"*Edinburgh, December* 16, 1874.—The Lord Ordinary having heard counsel, and considered the closed record, proof, and process, assoilzies the de-

fenders from the conclusions of the summons, and decerns: Reserves right to the pursuer to receive payment from the defenders, Messrs Peter Moir & Son, of the net proceeds received by the re-sale of the horse, which took place on 26th August 1874 with consent of parties, saving their rights and pleas in this process; finds the defenders entitled to expenses, of which allows an account to be given in, and remits the same, when lodged, to the auditor to tax and to report.

"*Note.*—The defenders, Messrs Peter Moir & Son, sold at their auction mart in Edinburgh, on 8th July 1874, a bay mare, on the order of the pursuer. That mare was described, by the pursuer's instructions, in the catalogue of the sale as having "been driven regularly in double and single harness." She was sold on that representation, and under the conditions contained in certain printed rules and regulations on which Messrs Moir & Son conduct their sales by auction. By these rules and regulations it is provided that a purchaser who objects to the purchase of any lot 'must intimate such objection and return the lot on or before the second day after the sale, otherwise the lot shall be deemed to be as it was represented at the sale, and no objections thereafter received.' It is also provided by these rules that 'the seller shall be entitled to receive the purchase-money on the third day after the sale, provided no objection has been stated, and that Mr Moir has then received the price.'

"The defender, Patrick Birnie, bought the mare at the auction of 8th July, on the faith of the representation contained in the catalogue, and under these rules and regulations, at the price of £36, 15s., which he paid. The mare was on the day after the sale tried by his servants in single and in double harness, and behaved so badly that she was returned to Moir & Son early on the second day after the sale, upon the ground that she was not as represented in the catalogue. On the same day Messrs Moir tried the mare both in double and single harness, and, being satisfied that Patrick Birnie's objection was well founded, they intimated to the pursuer that the mare had been returned, and that on trying her in harness they found that she was 'rather dangerous to drive, having shown vice.' The purchase-money was afterwards repaid by Moir & Son to Birnie, by credit being given him in his account with them for other purchases. The mare, after standing at livery pending the dispute, was, of consent, re-sold on 26th August for £33, 12s., under reservation of the rights of parties in the present action.

"The question raised for decision is, whether the defenders are liable in payment of the price which the mare fetched at the sale of 8th July 1874.

"The Lord Ordinary is of opinion that the statement in the catalogue that the mare 'had been driven regularly in double and single harness,' was a warranty. It formed part of the contract of sale. It was an essential element in that contract. And the defender Birnie bought the mare on the faith thereof. (*Scott* v. *Steele*, Dec. 9, 1857, 20 D. 253.) The Lord Ordinary is also of opinion that there is implied in such a warranty that the mare was free from such bad habits as prevented her from being driven regularly in harness. In short, that she ordinarily had been steady in harness.

"The question then is, had the mare been driven regularly in double and single harness? After careful consideration of the proof, the Lord Ordinary considers that this question must be answered in the negative.

"When tried by David Dickson, groom to the defender Birnie, a man experienced in breaking and training horses, the mare would not drive either in single or double harness, and she behaved so badly that both he and the groom who accompanied him were of opinion that she had not been driven regularly in harness. They accordingly returned her to Moir & Son on that ground, in the absence of their master Birnie, who had gone to Ireland on the night of the purchase. Messrs Moir & Son tried her both in double and single harness on the day that she was returned, and were so satisfied of the validity of the objection stated for Birnie that they took her back, and accounted to Birnie for the price which he had paid them. On this point the evidence of Mr Moir, Henry Macdonald, William Bryan, and John Riddell is conclusive. Mr Moir, who was in the gig when the mare was tried in single harness by Macdonald, a skilled and experienced breaker, gives a full account of her behaviour, and says that from what he saw he formed a very bad opinion of her. He also says, "I thought she was a very dangerous animal, and not to be trusted into any one's care. I am satisfied, from the trial made, that she had not been driven regularly in single harness. I came to be satisfied of that because she went so very unsteadily. She pulled all to one side, and would neither trot nor canter. She did not go straight forward like a horse that had been regularly driven. She went like an untrained horse that had never been in harness before. In consequence of this I was quite satisfied that she did not come up to the representation in the catalogue.' The mare was also tried in double harness by Macdonald, and he formed a similar opinion of her. So also did William Bryan, and John Riddell, cashier to Moir & Son, the latter of whom depones, 'I considered she was not what she was represented to be in the catalogue, and that between man and man I was justified in taking her back.'

"As regards the evidence for the pursuer, the Lord Ordinary is of opinion that he has failed to prove that the mare had been driven regularly in double and single harness. Although he bought the mare about the middle of March 1874, he had her only for about a fortnight in his possession and in use when she injured herself. He states that he drove her several times during that period in single harness, and that she went well and quietly. But the hostler who had charge of and regularly drove her during that time is not examined. The pursuer stated that he did not know where the hostler had gone to. But he does not say that he made any exertion to find him. The mare was then sent to Glasgow, as she is stated to have injured herself by what is technically called speedy cut. After being under treatment there in Fraser's stable from 14th April to 2d June, she was sent to the stable of Peter Findlay, veterinary surgeon, Glasgow, where she remained from 3d June to 8th July (that is five weeks), on which day she was sent to Edinburgh for sale by Moir & Son. The alleged speedy cut was cured about a week or ten days after 3d June. Why was the mare left at Findlay's for the remainder of those five weeks? The Lord Ordinary considers that this was done for the purpose of getting the mare broke by Findlay for harness. Findlay depones that he does not break in horses. But his groom, William Boyd, depones that it is part of Findlay's business to break in horses

and that the horse was out in the breaks, both single and double, every other day. If the mare was only standing at livery in Findlay's stable, it was, as he admits, his duty to exercise the horse. But in his account he charges the pursuer, besides livery, for breaking the mare, the charge for both for the five weeks being £7, 15., or 31s. a-week. While the mare stood in Fraser's stables before going to Findlay's stable, the weekly charge for livery was only 17s. 6d. Findlay depones that he drove the mare while in his charge both in single and double harness, and that after the first two or three days she went steadily. There is other evidence for the pursuer to the same effect. The Lord Ordinary looks upon that evidence with great suspicion. The evidence of Mr Moir, the pursuer's agent in the sale of the horse, and of his breaker, groom, and cashier, as to the behaviour of the horse on the 10th July, is above all suspicion. They corroborate the evidence of Birnie's breaker and groom as to her behaviour in harness on 9th July. In such circumstances the Lord Ordinary cannot believe that the mare could have gone quietly in harness during the three weeks before 8th July, when she was sent from Findlay's to Edinburgh for sale, and then have behaved so very badly in harness as it is clearly proved she did on 9th and 10th July, immediately after the sale. It is proved that the mare was not in season (at which times mares cannot be depended on), and she received a full and careful trial in Edinburgh. The Lord Ordinary considers that the mare was sent to Findlay in order that, when her speedy cut was cured, he might break her in, and make her steady in harness, with a view to her sale. Such breaking in cannot, he thinks, support the warranty of the pursuer that she had been driven regularly in double and single harness. The pursuer depones that he drove the mare twice in double harness when she was at Findlay's stables. But both Findlay and his groom deny this. John Dolan, the horse-dealer who sold the mare, on the same day that the pursuer bought her, to the dealer from whom the pursuer bought her, states that he drove her repeatedly, that she went quietly in both double and single harness while in his keeping, and that there was nothing wrong with her mouth. But it is clearly proved by the persons who tried her in Edinburgh that she had a very bad mouth, one side of it being very tender. If the mare had a good mouth and went quietly in harness when in Dolan's hands, (as to which the Lord Ordinary is not satisfied) she must have been spoiled after the pursuer got her. When the mare was sold a second time on 26th August, she was purchased by James Miller, a cab proprietor in Edinburgh. The pursuer obtained an adjournment of his proof in consequence of the non-attendance at the proof of James Miller and other three witnesses, although duly cited. A warrant for letters of second diligence, to compel the attendance of Miller and these other witnesses was also granted at the same time. Notwithstanding this, the pursuer did not examine Miller, although his evidence as to the behaviour of the mare in harness would have been very important, and the Lord Ordinary called the attention of the pursuer's counsel to that."

Rough reclaimed.

Pleaded for pursuer—"(1) The defender Patrick Birnie, having purchased at Messrs Moir & Son's sale on or about the 8th day of July 1874 a bay mare, the property of the pursuer, at the price of £36, 15s. sterling, and having paid the said price to Moir & Son, the latter are liable to the pursuer in the same, under deduction of their charges, with interest on the balance; or otherwise, the defender Patrick Birnie is bound to make payment to the pursuer of the said sum of £36, 15s., with interest thereon as concluded for. (2) The present action having been rendered necessary by the defender, Patrick Birnie, having groundlessly repudiated his said purchase, he should be found liable in expenses. (3) In the event of their opposing, the defenders Peter Moir & Son should also be found liable in expenses."

The defenders pleaded—"(1) The pursuer having falsely and fraudulently represented the mare in question as one 'driven regularly in double and single harness,' and the same having been found to be disconform to this representation, the defender Birnie was entitled to return the same. (2) The pursuer is not entitled to payment from either of the defenders of the sum for which the mare was sold to Birnie in respect of said false and fraudulent representations, and they are therefore entitled to absolvitor. (3) The defenders Moir & Son having been willing to pay to the pursuer the sum for which the mare was ultimately sold, less the expenses of sale and cost of livery, and the only difference between the parties being a sum of about £10, the action should have been brought in the Small Debt Court. (4) In the circumstances of the case, the defenders ought to be assoilzied from the conclusions of the present action with expenses."

Authorities—*Percival* v. *Oldaker* 1865, Scott, Comm. Bench Rep., N.S. 18, 398; *Behn* v. *Burness*, 24th Feb. 1863, 32 Law Journ., Q.B., 204; *Scott* v. *Steel*, 9th Dec. 1857, 20 D. 253 Oliphant on Law of Horses, p. 113; *Young* v. *Giffen*, 4th Dec. 1858, 21 D. 87; *Hardy* v. *Austin*, 5th May 1870, 8 Macph. 798.

At advising—

Lord Deas—This action has been brought by Mr Rough against Messrs Moir and Birnie, to recover the price of a horse sold at the Horse Repository on July 8, 1874. The ground of action is that the horse was quite fit for the purpose for which it was sold, and that Mr Moir had therefore no right to refund the price to the buyer Mr Birnie. The mare was sold by public roup, and the catalogue of the sale bore that she had been regularly driven in double and single harness, but when she was tried after the sale it was found that she would not go either in single or double harness quietly or safely. That is the testimony of the defenders' witnesses. Dickson was told to try her on July 9, and he says:—"So long as he led her at a walk she went quietly, but when her head was let go she plunged and reared, and got upon the pavement. We went along by the back of the Castle, and got her the length of Princes Street by leading her, betwixt walking and trotting. We saw she was dangerous to us, herself, and the passers by. We returned by the Lothian Road, and brought her back by the low road to the stables in Grassmarket. She behaved in the same way back as on the way going out. I consider we gave the mare a fair and full trial in single harness. We tried kindly and gently to get her to go. From her behaviour on that occasion I formed the opinion that she was either naturally a bad animal, or that she had been spoiled. (Q) From what you observed were you

of opinion that the mare had been driven regularly in single harness? (Question objected to). (Objection repelled).—(A) I was satisfied she had not been driven regularly in single harness, or that she had been spoiled. (Q) Did you drive her also in double harness? (Objection taken and repelled).—(A) Yes. (Q) How did she behave? (A) She allowed herself quietly to be put into a four-wheeled brake alongside another horse. The horse was forced to tug her. She would not put her shoulder to the collar, but the other horse pulling the machine compelled her to go at a walk. She plunged and reared and rebelled, and would not go. She tried hard to jib, but could not get back, because the other horse was too strong for her. She behaved worse in double than in single harness, and I therefore brought her home and took her out. From what I saw of her performance I would say that she had not been driven regularly in double harness. When we let go her head we just had to get hold of it again, as she plunged and reared from one side to the other. She jumped on the footway, and tried to get the machine up against the wall to crush it. She became quiet when she was led. I suppose, from what I saw of her behaviour in single harness, that she was an old hand at bad behaviour, and I would make the same remark as regards double harness. We gave her a full and fair trial. The harness was all right."

That is the testimony of the defender's witnesses, and there is no reason to doubt that they are speaking the truth. Now, it is said that that evidence is not inconsistent with her having behaved well before. It is difficult to hold that there is no inconsistency. The only way in which the pursuer's witnesses try to justify that statement is by saying that Mr Findlay had been driving her, but it is quite plain that this was not driving a horse already trained, but driving her for the purpose of training her, though apparently not with much success, and that the only driving she got before the sale was when she was in Findlay's hands. Plainly, that is not a justification of the statement in the catalogue. In that state of the proof there can be no doubt that the mare was not fit to be driven in double and single harness, and the question therefore arises, was that statement in the catalogue a warranty? The Lord Ordinary has found that it was. It was strongly contended that those words relate to something past, while warranty is given as to the future. I cannot at all agree to that view. Warranty is a statement as to the condition at the time of the thing warranted, and I cannot hold that this was not a warranty merely because it does not refer to the future. The real question is, whether the buyer was fairly entitled to assume that this was a statement that the mare was fit for double and single harness. If he was so, then this is a warranty, and it is material to observe that this was a statement deliberately made in writing by the seller, for of course the auctioneer only knows what is told him. I think, in these circumstances, the words may be reasonably held to be a warranty, though, had the pursuer himself been present, and available for further information, there might have been more difficulty in holding them to be so. That view is not inconsistent with our judgment in the recent cases of *Riddell* and *Waugh;* still it leaves a nice question under the peculiarly strict words of the Mercantile Law Amendment Act. It must be admitted that if this was a false representation in the knowledge of the pursuer, or if he had no ground for believing it to be true, he would be just as much responsible as if there had been express warranty. The only question here is, whether the pursuer knew or ought to have known the truth. He had ample opportunity for doing so, and I think he must be held to have known or to have been bound to know that the mare had not been, and could not be, driven in double and single harness, and so the case comes under section 5 of the Mercantile Law Amendment Act. If within his knowledge the mare was defective, he was as much liable as if he had expressly warranted her, and therefore I agree with the Lord Ordinary.

Lord Ardmillan—Most cases of the kind are attended with difficulty, and this is not an exception. There are conflicting interests, and there is a conflict of evidence. The Lord Ordinary had the advantage of seeing and hearing the witnesses, and had the opportunity of estimating more accurately than we can do the weight and credit due to their testimony.

There are two views of the case which have both been argued. In the first place, I am, after some hesitation and difficulty, disposed to hold that, having regard to the Mercantile Amendment Act, the description proved and admitted to have been given of this mare in the sale catalogue as "been driven regularly in double and single harness," does amount to an express warranty of the fact so stated, and of the quality and sufficiency of the mare in so far as within that statement. Of the words there is no doubt. Of the meaning there is no doubt. Of the importance of the statement, seeing the mare was thus sold as fit for harness, and of the importance of the fact that the purchase was made on the faith of the truth of that statement, there is no doubt. The defender, the purchaser, founds on these words as express warranty —as an assured description, and as a statement inducing him to purchase. There is no attempt to infer or imply warranty. This is not, and cannot be, a case of implied warranty. The words are published and are sufficient. The recent case of *Waugh* v. *Robinson* was difficult, but it was on the facts not like this. Warranty had in that case not been given, nay, I I think it had been refused. A statement made after the refusal to warrant, and made in place of warranty, was viewed as not a warranty. But here the description of the mare in very plain language was given and published in order to attract purchasers, and the purchase was induced by that description, and was made on the faith of that description. That, I think, was an assured declaration, of the nature of a warranty, not a general warranty of soundness, but a warranty, special and express, that she had "been driven regularly in double and single harness." The description was meant to induce purchase on the footing of fitness for harness, and was so understood; and the purchase made on that footing. Then I have no doubt that, on being well and judiciously tried by most competent persons very soon after the sale, this mare was found to be quite unfit for harness —unsafe and unsuitable, unmanageable, and very dangerous. It is proved, as matter of opinion, by four or five witnesses of skill and experience perfectly competent to judge, that she could not have

been "driven regularly in harness." The testimony of the pursuer's witnesses adduced in opposition to those of the defender, has been carefully considered by me. The result is, that I come to the conclusion that the description in the catalogue, —the statement to attract purchasers,—was not according to the truth. I cannot believe that this mare had been "driven regularly in double and single harness." The witnesses for the purchaser negative that altogether, and the witnesses for the seller have not by any means proved it to my satisfaction.

If the driving spoken of as taking place in Glasgow was in the course of breaking the mare, that driving was not within the fair and honest meaning of the words "driven regularly in double and single harness." That is not what was proclaimed by the description given. The Lord Ordinary is of opinion that she was sent to Findlays to be broken; and that is very probable—the more so that there is a charge for breaking in Findlay's account. But whether that was the case or not, no such regular driving in double and single harness as was stated in the description has been proved as to support the description given of the mare. She certainly did not answer the description.

On the other view of the case, and treating the description in the catalogue not as a warranty but as a representation of fact with a view to a sale, I agree with Lord Deas. Looking to all the proof, I am compelled to the conclusion that the pursuer did not and could not really believe that the description in the catalogue was according to the truth. That she was driven by a breaker, or in the course of breaking, does not satisfy the description. That is not what was meant to be proclaimed in the catalogue as an inducement to purchase. What was so stated was misleading, contrary to the fact, and inducing the contract.

Lord Mure—On the first question I think there is considerable nicety, whether under the Mercantile Law Amendment Act this was a warranty. It is clearly proved that the statement was not true in point of fact, but the question is, whether it can be considered a warranty. It is more a representation than a warranty, but there are words in section 5 which seem to bring it under the statute—I mean those which provide that if "the goods have been expressly sold for a specified and particular purpose. . . . the seller shall be considered without such warranty to warrant that the same are fit for such purpose." I am disposed to think that this statement falls under these words. If the mare was unfit for her purpose the pursuer is not entitled to recover. Taking it on the other view, however, I think the pursuer is not entitled to recover, because the statement was not true. There is no evidence that the mare was ever driven except by breakers, and the pursuer himself, whose recollection in the matter is not very accurate. I think he had no good ground for inferring that the horse had been regularly driven in double and single harness, and so had no right to put such a statement in the catalogue.

Lord President absent.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the Reclaiming Note for James S. Rough against Lord Mackenzie's Interlocutor of 16th December 1874; adhere to the said Interlocutor, and refuse the Reclaiming Note; find the defenders entitled to additional expenses, and remit to the Auditor to tax the account thereof, and report."

Counsel for the Pursuers—Rhind. Agents—Ferguson & Junner, W.S.

Counsel for the Defenders—Mair. Agent—Robert Menzies, S.S.C.

Tuesday, March 9.

FIRST DIVISION.

(Heard before seven Judges).

SPECIAL CASE—MENZIES AND OTHERS.

Marriage-Contract—Provisions—Renunciation.

Rights secured to a wife by her antenuptial marriage-contract cannot be abandoned or renounced by her while the marriage subsists.

Marriage Contract—Revocation—Trust.

By antenuptial contract of marriage the wife conveyed her whole estate to trustees for the purposes—First, payment of the annual income to herself and her husband and the survivor of them; second, payment of the fee of the whole estate to the child or children of the marriage, whom failing, to the wife and her heirs and assignees. Then followed a declaration that the wife should have power to direct the trustees to invest the trust-funds in the purchase of lands, or in such other way as she might direct. There were children of the marriage, and after they had all attained majority their mother, who was then 65 years of age, called upon the trustees to make over to her the whole trust-estate, and bring the trust to an end on receiving a renunciation by the children of their rights under the marriage contract, and a discharge by the spouses. *Held* that the trustees were not entitled to denude of the trust-estate.

This was a Special Case for the opinion and judgment of the Court, brought by Fletcher Norton Menzies, Esq., and others, acting trustees under the antenuptial contract between Captain Jack Henry Murray and Miss Catherine Menzies, of the first part, the said Captain Jack Henry Murray and Mrs Catherine Menzies or Murray of the second part, and Mrs Emilyn Niel Murray or Baird and others, children of Captain and Mrs Murray, of the third part.

The following were the facts of the case:—

By antenuptial contract of marriage, dated 23d January 1845, between Captain Jack Henry Murray and Miss Catherine Menzies, Captain Murray disponed to himself and his intended spouse in conjunct fee and liferent, for his liferent use allenarly, and to the child or children of the marriage in fee, his whole estate heritable and moveable, with certain limitations in case of the second marriage of either party, and with a declaration that the wife's liferent should be in full satisfaction of her legal rights. Miss Catherine Menzies, on the other part, assigned to trustees all her estate, heritable or moveable, then belonging to her or which should be found to belong to her at the time of her death, for the following pur-