

(“in time coming,”) the words (“to be a line drawn  
 “upon the north-west point of the banks of Cultyre,  
 “across the channel of the river, through the middle of  
 “Nicol Young’s hillock, so far as to include below it a  
 “part of the pool of Cultyre, and, of course, the whole  
 “pool of Stockiebanks, and every other part of the  
 “river below Cultyre”) be inserted; and that after the  
 word (“and”) the words (“the lands”) be left out; and  
 that after the word (“plan”) and before the word  
 (“mark”), the words (“to be”) be inserted; and that  
 after the word (“marked”), the words (“as aforesaid”) be  
 left out; and that the words (“by the Lord President  
 “of the Court of Session as relative hereto, and”) be  
 inserted. And it is hereby further ordered and adjudged,  
 that this interlocutor, thus varied, be, and the same is  
 hereby affirmed.

1769.  


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 BRODIE  
 v.  
 GRANT, &C.

For the Appellant, *C. Yorke, Al. Wedderburn, Ilay  
 Campbell.*

For the Respondents, *Ja. Montgomery, Al. Forrester.*

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SIR LUDOVICK GRANT, &c.,	.	.	<i>Appellants ;</i>
ALEXANDER BRODIE, Esq.,	.	.	<i>Respondent.</i>

1769.  


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 GRANT, &C.  
 v.  
 BRODIE.

House of Lords, 25th April 1769.

This was a dispute about the right to the mussel-scalps in  
 the river Findhorn.

A grant from the Crown to Ross of Kilravock, of the  
 mussel-scalps in the River Findhorn, which is a public river,  
 supported by long possession, was preferred before a similar  
 grant of later date, in favour of the appellants.

For the Appellants, *Ja. Montgomery, Al. Forrester.*

For the Respondent, *C. Yorke, Alex. Wedderburn.*

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JEAN MURRAY, otherwise CARLYLE, of Locharthur, and Husband,	.	.	<i>Appellants ;</i>
GEORGE CARLYLE, Son of the deceased THOMAS CARLYLE, in Travala, in Wales,	.	.	<i>Respondent.</i>

1770.  


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 MURRAY, &C.  
 v.  
 CARLYLE.

1770.

House of Lords, 21st February 1770.

MURRAY, & C.  
v.  
CARLYLE.

DEED—CONSTRUCTION—CONDITIONS.—A marriage-contract, although absurd, and inconsistent in some of its clauses, yet, as it was clear in the destination clause, it was sustained.

The estate of Locharthur, lying in the stewartry of Kirkcudbright, in Scotland, was originally an unlimited fee devised to heirs-general.

In 1736, an ante-nuptial contract of marriage was entered into between William Carlyle, the then proprietor, and Agnes Maxwell, whereby she was provided with a certain jointure. And it was specially provided and declared, “That in case  
“there shall be heirs male procreated and existing of the said  
“future marriage at the dissolution thereof, they shall suc-  
“ceed to the said William Carlyle, in his four merkland of  
“Locharthur, and lands of Halmyre; and failing thereof, the  
“eldest heir female of the said future marriage, with this ex-  
“press provision, that she marry legally with the lawful  
“next in blood and kindred of the name of Carlyle; and  
“failing heirs female, the heirs male of Michael Carlyle, in  
“Boreland, his brother-german; which failing, the said  
“Michael Carlyle, his heirs female, with the foresaid express  
“provision in the case of heirs female in this future marriage;  
“and failing thereof the said William Carlyle, his own  
“sisters-german, and their children; all which failing, the  
“said William Carlyle, his own nearest heirs and assignees  
“whatsoever.”

In 1743, William Carlyle made the following settlement, after making provision for his wife: “Moreover the said  
“William Carlyle hereby binds and obliges himself and his  
“heirs whatsoever, to provide and secure the four-merk  
“land of Locharthur, lying in the parish of Newabbey, and  
“stewartry of Kirkcudbright, and the foresaid lands of  
“Halmyre, in favour of the eldest heir male, to be procreate  
“of this present marriage, and his heirs; which failing, the  
“eldest heir female thereof, and her heirs, with this express  
“provision, that she marry legally with the lawful next in  
“blood and kindred of the name of Carlyle; which failing  
“in the eldest, then the second, if any be, or any succeeding  
“daughter of this present marriage, is hereby appointed to  
“succeed, such always being obliged to marry in the above-  
“mentioned manner; if otherwise, they are hereby debarred  
“from the succession, and appointed to receive only such  
“suitable and competent portions, determined by friends on

“ both sides, as will consist with the state and standing of  
 “ the family : Further, failing heirs, both male and female of  
 “ this present marriage that is here appointed legally to suc-  
 “ ceed the eldest heir male of Michael Carlyle, in Boreland,  
 “ of Southwick, his brother-german, and his heirs ; which  
 “ failing, the said Michael Carlyle, his heir male then is here-  
 “ by appointed to succeed his heir female with the foresaid  
 “ express provision above-mentioned in the case of heirs  
 “ female ; all which failing, the said William Carlyle and his  
 “ said brother, in above-mentioned manner, then therefore  
 “ legally succeed, and by these presents are ordered and ap-  
 “ pointed lawfully to succeed, the said William Carlyle, his  
 “ own next and nearest heirs male in blood and kindred of  
 “ the name of Carlyle, with the express restrictions, provi-  
 “ sions, and limitations, to them and their heirs male and  
 “ female only, in above-mentioned and underwritten way,  
 “ and the manner of succeeding, and no otherwise, for divine  
 “ duties sake, and for conservation of what worldly estate and  
 “ interest is or may be in the family, still with the lawful  
 “ next in blood and kindred into the name and family of  
 “ Carlyle : And, moreover, without prejudice to the above  
 “ provisions and conditions, it is hereby expressly provided  
 “ and appointed, that whichsoever of the foresaid heirs it  
 “ shall happen to succeed, by virtue of the foresaid order and  
 “ substitution, shall be of pure and true Presbyterial prin-  
 “ ciple and practice, according to the Word of God, and  
 “ purest Reformation of the truly Covenanted Presbyterial  
 “ Church of Christ in Scotland, and no otherwise, who upon  
 “ their failing to be, or not continuing such in principle and  
 “ practice, were it in his own son, then therefore the next in  
 “ blood and kindred of the name of Carlyle, who is of pure  
 “ and true Presbyterial principle and practice, shall succeed  
 “ by their destination ; wherefore all are hereby declared,  
 “ who are not of the said pure and true Presbyterial prin-  
 “ ciple and practice, *eo ipso*, to lose and forfeit the benefit of  
 “ the above-mentioned succession, and the same is appointed  
 “ to devolve on the next heir substitute that is of such pure  
 “ and true Presbyterial principle and practice, who is there-  
 “ upon hereby authorised immediately after such failure, to  
 “ serve heir, and to enter into the possession foresaid, and  
 “ that without being liable for the debts or deeds of the  
 “ person so failing and contravening.”

1770.

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MURRAY, & C.  
v.  
CARLYLE.

William Carlyle never had any issue of this marriage. His brother Michael had a son, who was treated as the heir, and

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MURRAY, &C.  
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on his death, the appellant, who was a daughter of William Carlyle's only sister, was taken into his family. William Carlyle died in 1751, and Michael succeeded his brother in the estate.

Michael possessed the estate until 1763, when he died, and the deceased's estate was then taken possession of by the appellant as an heir female, until the respondent came forward and laid claim to the estates as nearest heir male of William Carlyle.

Jan. 28, 1768.

Having brought his action of declarator, claiming the estates as nearest heir male, decree in absence was allowed to

June 26, 1768.

go out by default. On representation, the Lord Ordinary

July 26, 1768.

adhered, and of this date, he found that the succession of the lands of Locharthur devolved "upon the pursuer (respondent), as nearest heir male and of provision to the deceased William Carlyle of Locharthur in virtue of the contract of marriage, dated 21st Oct. 1743."

In a reclaiming petition to the Court, the appellant contended, 1st, That the deed claimed upon by the respondent, was irrational, and in many of the articles, impossible to be carried into execution, and, therefore, ought to be totally disregarded. That it was, in many respects, unintelligible, absurd, and impossible to be carried into execution, because the granter obliged himself to infest his wife for life in Halmyre, and in another part of the deed he immediately conveys these lands of Halmyre to his heirs male. 2d, The deed contained a limitation to the heirs of the marriage, and their heirs—remainder to the heirs of Michael Carlyle. By these limitations, if William Carlyle, the granter, had a child surviving him, and dying without issue, Michael Carlyle would have taken the succession, as heir to such child, but if William, the granter, had died without any child, then Michael himself was excluded by his own child, who would have taken under the second limitation.

Dec. 3, 1768.

The Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are, hereby affirmed.

For the Appellants, *Al. Wedderburn, Tho. Lockhart.*

For the Respondents, *J. Montgomery, H. Dalrymple.*