were complied with, is put more strongly forward. I say I observe that such a claim advances very much after the object has been attained by the sale of the estate, and a considerable portion of the property realized: but I cannot imagine that there is any good foundation for the argument, that, at the time the deed was executed, this was in truth made a condition. For what do I find? They are constantly, as they say, writing for an acquiescence. If it was in the deed, the deed itself would be a proof of the acquiescence. There required nothing else. But besides that, while they are complaining that they can get no answer, in effect, nay, in terms, Mr. Atherton writes, "If you acquiesce, as I hope you will, and recommend you to do, let Messrs. Peebles and Campbell prepare an agreement and send it out." And this is not answered. No such agreement is prepared. Another letter says, "If things turn out so-and-so, I do not wish to alter it from the way in which it now stands." How did it then stand? If it stood as is now pretended, that observation would have had no place; but the whole correspondence shews that it was never understood that the respondent had expressed any acquiescence in the alterations, except so far as receiving the deed, and acting upon it, went. But receiving the deed as he did, that deed did not import any such alteration, and nothing was sent with the deed which could prevent the parties duly executing the trust, or powers I should rather say, given by the deed.

It appears to me, therefore, that the deed itself is inconsistent with the claim now set up on the part of the appellant. The appellant has utterly failed in shewing that any amendments which were at any time made, were acquiesced in by the respondent in favour of the claim which is now set up; and the repetition in his letter, that there were conditions and stipulations at that time, is utterly inconsistent with any condition or stipulation by which it was intended that the other parties to the deed should be bound. When I look at the document which was sent with the deed signed by both parties, and which is a document purporting to explain why and how, and to what extent, they had made alterations, that document is entirely silent on the subject; and I cannot therefore give any effect to that private document, which the parties framed as between themselves, and which appears to me to be open to very many remarks. And it is remarkable that Mr. Atherton writes, and that in many instances, that the deed had been altered in the way in which they thought necessary. I find the way which they thought necessary is the document to which I have before referred, which is a document calling for much more attention and respect than many of the others which are to be found in this case.

I repeat, therefore, that after having attended to all the arguments which have been urged at the bar, fortified as they are by the concurrence of three very learned Judges, I still think that the four Judges who differed from them, have taken the more correct view of the case, and that the motion which has been made by the Lord Chancellor, that your Lordships should dismiss this appeal, is a motion to which it would be advisable for your Lordships to agree.

Mr. Anderson.—I hope your Lordships will not give the costs of this appeal. Your Lordships see that three of the Judges were in our favour; there was the narrowest possible majority against us.

LORD CHANCELLOR.—On what ground those learned Judges were in your favour, I cannot conceive.

Interlocutor affirmed with costs.

Second Division—Thomas Deans, *Appellant's Solicitor.*—T. W. Webster, *Respondent's Solicitor.*

NOVEMBER 30, 1852.

PETER FERRIE, *Appellant*, *v.* GEORGE FERRIE and FERRIE'S TRUSTEES, *Respondents.* (NO. 2.)

Heritable and Moveable—Conversion—Settlement—Construction—Trust Settlement. *A testator by trust deed directed that no part of his heritable property should be sold till his eldest grandchild, if any, should attain* 21, *or, if none, then till* 19 *years after the date of the deed; and then the trustees were to convey all the property to the children in certain proportions. The trustees, having declined to accept the trust, all the children by deed agreed that part of the heritable property should be sold at once, which was done to pay debts, and the rest held in trust for* 19 *years, and then divided.*

HELD (partly affirming judgment), *that the deed of agreement operated at once as a conversion of the heritable into moveable estate, except as to the portion to be held in trust, and the rents of this portion were heritable till a sale actually took place.*[1]

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[1] See case immediately preceding; also previous report, 23 Sc. Jur. 219. S. C. 24 Sc. Jur. 52.

A testator, the father of four children, A, B, C, and D, died leaving a trust deed, whereby he provided, that, if possible, no part of his heritable property should be sold until the eldest of his grandchildren, if any, should attain 21, or if none, till the expiration of 19 years after the date of his settlement—that, on the expiry of that period, the trustees should divide and pay, and denude themselves of the residue in favour of his children or their successors, in the proportion of two fourths to A, one fourth to B, and the remainder to D, or their successors respectively—and that, in case of the decease of any of his younger children without issue, the share of the first deceaser should belong to A and his issue. The trustees having declined to accept, the children of the truster entered into an agreement, by which it was provided, that part of the property should be sold immediately—that the rest should be held in trust by them for the purposes of their father's settlement, as modified by the agreement, with power to a majority to sell the remaining property, even within 19 years from the date of the settlement—and that, immediately after the expiry of the 19 years, the whole should be sold, and the proceeds divided in terms of the settlement. B died, leaving a trust-deed executed on deathbed, when (there being no grandchildren) B's share was claimed by his trustees, and likewise by A and C,—A claiming it as in terms of the father's settlement, and C as B's heir-at-law.

The appellant appealed against the judgment of 3d Dec. 1850, maintaining that it ought to be reversed—Because (B) William Ferrie's share of his father's property was heritable in its nature; and, the deed of settlement executed by him *in lecto* being ineffectual, that share devolved on the appellant, as his heir-at-law.

The respondents maintained, that according to the sound construction of the trust deed, and deed of agreement, the late Dr. W. Ferrie's share of the residue of his father's trust estate was moveable, and fell to the respondents, as his trustees.

Bethell Q.C., and *Anderson* Q.C., for appellant.—It was originally a question in the Court below, whether William's share vested in him during his life. That, however, is now admitted by both appellant and respondents, and the only question here is, was that share, thus vested, heritable or moveable? We shall first see what it was under the father's deed alone, and then, secondly, what alteration was made by the deed of agreement. 1. William's share was heritage under the trust deed of his father. One of the Judges below held it would have been heritage if there had been no second deed, and the other two Judges are silent on this view of the question. The true rule is, that wherever heritage is settled by a *mortis causa* deed, the shares or interests of the beneficiaries are heritable, unless there has been a conversion out and out; but a mere option or discretionary power to convert for a limited purpose, such as to pay testator's debts, is not a conversion of this nature—*Williamson* v. *Adv. Gen.* 2 Bell's App. C. 89. Jarman (Wills, p. 526) states the general doctrine. Here, therefore, there was only a conversion of so much property as was required to pay the extrinsic demands, viz. of the testator's creditors,—but, subject to that, the property was to be kept in its native form, and quite untouched. 2. Even if there was a conversion under the first deed, the second deed had the effect of reconverting it. Though the first deed operated a conversion, it was still competent for the beneficiaries to take the property as it was in its unconverted state, and if they shewed an intention to do so, then the property was *ipso facto* reconverted, and its original quality restored. The rule as to reconversion differs from that as to conversion in this,—that whereas, in order to operate a conversion, the intention must be explicit and most definite, in order to put an end to that conversion, and restore the original quality of the property, the slightest indication of an intention so to treat it by those absolutely entitled, is all that is necessary—*Per* Cottenham L.C. in *Cookson* v. *Cookson*, 12 Cl. & Fin. 146. Such an intention is clearly shewn in this second deed, for all the parties concur in exercising an act of ownership over the property. They expressly provide, that the heir at law shall make up his title to the heritable property,—thus shewing they treated it as heritage. This election settles the quality of the property—*Crabtree* v. *Bramble*, 3 Atk. 680. It is true this second deed contains provisions as to the sale of the property,—but this is obviously no conversion, otherwise no redeemable right could ever be heritable. Nor was the second deed intended to regulate the succession to the property after the death of the parties, but it was an *inter vivos* deed, giving powers of management to the trustees for behoof of the granters.

[LORD CHANCELLOR.—Were the trustees and granters not the same persons?—if so, that would be an odd trust.]

There was a slight difference—perhaps the trust was created, because one of the children was a married woman. It was, however, a case where the absolute owners merely vested the property in their own trustees or agents to sell at a future time, but until that sale the property was to remain unchanged. If, then, it remained unconverted heritage till sold under the second deed, it follows, that what was not sold at William's death must go to his heir at law, the appellant. Lastly, it is to be observed, that while a power is given by the first deed to sell before the end of nineteen years, there is no direction as to applying or reinvesting the proceeds. There being a total silence on that point, the character of the property must be undisturbed, and the heir at law is entitled—*Patrick* v. *Nicholl*, 1 D. 207. If the character of heritage belonged to the property under the first deed, we are entitled to contend that it was wholly out of the power

of the parties, by any second deed, to displace the character thus impressed by the settler. They could only take the property as it was given to them.

Rolt Q.C., and *A. Dunlop*, for respondents.—1. Under the will or trust-settlement of Robert Ferrie, the share of William was moveable. Wherever a will in substance contains an absolute direction to sell, and divide the surplus among legatees, it is a well-known rule, that each legatee takes his share in the character of moveable estate. It is immaterial what is the time when the estate is directed to be sold, provided the direction to sell be absolute. Whenever a surplus is ordered to be divided in these circumstances, there is a conversion out and out—*Grieveson* v. *Kirsopp*, 2 Keen, 653; *Burrell* v. *Baskerfield*, 11 Beav. 525; *Ashley* v. *Palmer*, 1 Meriv. 296; *Amphlett* v. *Parke*, 2 Russ. & Myl. 221; *Jackson* v. *Hurlock*, Ambler, 487. The same principle prevails in Scotland—*Angus* v. *Angus*, 4 S. 279. The rule is stated in Bell's Pr. § 1482, to be this,—that the *jus crediti* is heritable if the beneficiary can demand the delivery or conveyance of a specific subject; but is moveable if he can only claim a share of the general trust-fund. It is immaterial whether the trustees have fulfilled the directions of the will or not—*Dick* v. *Gillies*, 6 S. 1065. Where the truster has not absolutely ordered the sale, but has given a power to sell, then the intention of the truster must be extracted from the whole deed, as is implied in *Cathcart* v. *Cathcart*, 8 S. 803; *Finnie* v. *Com. of Treasury*, 15 S. 165. It is quite clear from the trust deed, that before the trust should be concluded, the whole subjects were to be sold,—these two events being coupled together by the 6th clause, and the 7th clause is unintelligible except on the same supposition. The 8th clause makes this case exactly like *Ashly* v. *Palmer*, *supra*. [LORD CHANCELLOR.—This case lies within the four corners of the instruments, and therefore it is unnecessary to go into other cases.]

But the same principles must be applied, and other cases may illustrate, if they do not govern, this—*Biggs* v. *Andrews*, 5 Sim. 424; *Cookson* v. *Cookson*, *supra*. 2. Whatever may have been the interest of William under the trust deed, the second deed, made by the parties who were the sole beneficiaries, settles the matter. A new trust was created by these parties, and they bound themselves together to a certain mode of dealing with the trust property. The whole property was to be sold, and the *jus crediti* of each under the second deed was to demand, not the specific property, but payment, or an account of sums of money, which is an interest moveable in its nature. Upon the whole, therefore, we say that the character of moveable estate was impressed on the heritage, at all events at the end of the nineteen years; and as to the intermediate rents, there can be no distinction drawn. The Scotch courts treat them as one, the key always being the ultimate destination. *Lastly*, as to the objection, that it was incompetent for the parties to the second deed to displace the character impressed by the first deed of the truster, this cannot be listened to from the mouth of one of the consenting parties to that deed.

LORD CHANCELLOR ST. LEONARDS.—My Lords, this case has been very elaborately argued, and the only difficulty which I feel is upon what is the nature of the property between the time of the creation of the trust and the expiry of the nineteen years. As regards that part of it, I do not propose to advise your Lordships now to dispose of this case. But I think there is no serious difficulty as regards the true construction of the instrument. There may be a point of considerable difficulty upon the testamentary instrument; but without going any further into that at present, the parties assumed a power to alter the destination of the property in an unusual way—not by altering the beneficial interest, but they assumed a power positively to sell the property at a time when it was not saleable under the testamentary instrument; and the deed in effect assumed the power of abrogating that instrument, because they otherwise never could have obtained a power to sell the estate to the satisfaction of a purchaser, and to the satisfaction of the Judges in the Courts of Scotland, so as to enable an immediate sale of the property not bound by these trusts. I must assume, therefore, that the deed of trust, as I should call it—the second deed—did enable the parties to that deed to delegate the property in the manner in which they thought proper.

Ultimately there were no grandchildren; and I observe that all the Judges, without giving any distinct opinion upon how far the parties had the right to abrogate the testamentary deed, were of opinion, in the events which had happened, that the second deed was binding; and I must assume it to be binding. But that leaves the construction open for your Lordships to decide upon as regards that deed.

Now, the nature of the property was this—The testator had two classes of properties—one, the whole of which was immediately fit for sale, and considered ripe for sale. It would certainly sell as well as it could be hoped it ever would sell at a future time; and there was a desire to accelerate the sale, because the debts were very heavy, the creditors were pressing, and there were no assets to meet the debts. But the testator had unfortunately postponed the sale to the end of nineteen years. The parties therefore agree to a new arrangement. Now, in the recitals, I think it will be admitted, that the parties do not agree to an absolute sale of the whole property, that is, they have not expressed that intention; but when they come to deal in the operative part of the instrument with the property, they dispose of it in this way,—they divide the property into two classes; the St. Vincent Street, Renfield Street and Carlton Place property are placed in one

class, and the Gordon Street and Buchanan Street property in the other class. Now, they deal with it in this way,—the first class of property is to be sold immediately and converted into money; and it is perfectly clear (and it is more like a power than a trust) that there was an absolute conversion of the property for the payment of debts. But it was assumed throughout the whole of that instrument, that that fund would be exhausted in the payment of debts. It was perhaps thought that that fund would be sufficient to pay the debts, but it nowhere appears to have been supposed that there would be a surplus of that property after the payment of debts. The whole of the property, however, was delegated to the payment of debts. Now, in the result, debts are at this moment unpaid which are clearly provided for in this deed, and to the payment of which the first class of property is delegated by this second deed. Therefore it is quite clear that that trust still remains to be exercised as regards the St. Vincent property; and remaining to be exercised according to the settled rule of law, we must consider the property as converted from the time when it ought to have been converted, that is, forthwith after the execution of this deed. As regards the St. Vincent Street property, there is no difficulty at all.

Then comes the second class of property,—the Buchanan Street and Gordon Street property. No absolute disposal seems to have been contemplated as to any surplus fund arising from the property in the first class after the payment of the debts; and the way in which the parties have dealt with the property in the second class is this,—they have said, that until that property is sold, the rents shall go according to the destination in what I call the testamentary deed. That admits the only real doubt in the case. Till there is a sale, you will take the legacy. Now observe, that if it had not been for the death of a party, it would have been perfectly indifferent whether the character of the property was changed or not. The person entitled under the testamentary deed was to receive the rents equally under the second deed. It would be perfectly indifferent whether he took it as real property or as personal property. But it is his death which has caused the difficulty which the House has now to deal with.

Now, considering the matter as remaining certainly untouched by that fourth clause, then you come to the *fifth* clause, which says, that immediately after the sale of the property in the first class, and the disposal of the proceeds in the manner specified, or, in other words, as soon as you have sold all the property delegated to the payment of debts, and paid those debts, and assuming in that particular part in the commencement that the debts would be paid by the application of the property in the first class, then it goes on to say you shall forthwith deal with this property in the second class, and convey it to the persons who are interested under the will, although not interested in the property in a way in which it can be directly conveyed to them or their survivors, but in trust, according to their several rights under the testamentary deed. So far that is untouched again. The property itself—the heritable property—the *corpus*—is there left to go according to the deed—hitherto, we will say untouched. But then there is this material proviso, or condition, or modification at the end,—but so far as it is not inconsistent with, or does not contravene anything hereinbefore or after contained. And therefore it amounts to this,—you have told the parties, that when this property in the first class is sold, the rents of the property in the second class shall go to the persons entitled: Then, when the property in the first class is sold, you shall convey the property in the second class to the persons entitled to it as trustees. They are not all entitled, as I said before, but in trust, as if they really were entitled. Now, there are the words "hereinbefore and after." They anticipated that, notwithstanding the sale of the property in the first class, and the conveyance of the property in the second class to these parties, a sale might become necessary of the property in the second class, or might be thought desirable. And then, by the *sixth* clause, they give the most absolute power to the majority to bind the minority to sell that very property which has so before been directed in the fifth clause to be conveyed to these parties. They give the right and the absolute power to the majority to bind the minority to sell that property, notwithstanding the fifth clause. It is clear, therefore, that the property might be sold, whether it was thought necessary or not. If necessary, surely to be sold; if desirable in the view of the majority binding the minority, equally to be sold. Therefore, if that sale should take place, then that property at once becomes impressed with the character of personal estate; and, being impressed with that character, from that moment it is to belong to the persons who are entitled to the personal estate, and not to the persons who would take it as heritable property.

Then comes the last clause—the *seventh* clause. It is plain enough. They say, whether there are children or not, in the event of your not having exercised that power which is given to you to sell the property in the second class before the expiry of the nineteen years—that is, the nineteeen years pointed out by the testamentary deed—to that extent, therefore, bowing to the will of the testator, and intending to carry his views into effect so far, that it might remain for nineteen years; but upon the expiry of the nineteen years, in the event of its not having been sold, then it is perfectly clear, by this seventh clause, which is now under your Lordships' consideration, that the property is absolutely to be sold, without the power of anybody to prevent that sale. The sale is imperative; and the sale being imperative, from that moment the property is impressed with the character of personal estate.

Now, observe how the price of that property, so sold, is to be applied. It is to be applied in the payment of the debts, if any, which shall then remain. So that the parties anticipated, that even at that time the debts might not be paid by the application of the other estates, and yet that the party entitled might not have thought fit to sell the estates in the second class. The estates in the second class are absolutely to be sold, and the money is to be applied to the payment of the debts.

The result therefore is, in the view which I humbly form of this part of the case, (and I cannot say that I have the slightest doubt about it,) that the decision of the Court below is perfectly right as regards the *corpus* of the property. I think that the estates in the second class must be considered as personalty when they are absolutely sold. But I do not entertain the same opinion as regards the intermediate rents arising from them. It does not appear to me that there is anything in this instrument which converts the property, from the time when it is delegated by the trust, so as by expression, but not by implication, to give those rents to the parties as personal estate. If that is the true view, the result would be, that as far as regards the rents till the sale, or till the time arrives when the sale is directed, those rents would go to the parties who would take them as heritable property, the *corpus* of the estate itself not being there referred to. But as this point was not taken in the Court below, it might suggest itself to the minds of your Lordships as not desirable; and I will not advise your Lordships to dispose of that point now. The learned Judges probably may have formed an opinion upon it, which they did not express. I propose, therefore, that this point shall stand over without disposing of the case, but merely disposing of it as far as my opinion goes upon the general question, upon which I shall not propose again to address your Lordships. As regards the other question, not intending now to dispose of it, I will not move the judgment upon the case; but I shall move your Lordships that the further consideration of it be postponed.

On 30th November (four days later).

LORD CHANCELLOR ST. LEONARDS.—My Lords, I stated to your Lordships at the close of the arguments, very much at large, the grounds upon which it appeared to me that there was an absolute conversion, at all events at the end of the period of nineteen years; that, therefore, from that time, it was to be considered as binding; and that, consequently, upon the general merits of the case, the interlocutor complained of must be affirmed. But I reserved for your Lordships' further consideration, the question with regard to the rents, until the time of conversion should have arrived, in order that, as that point had not been discussed by the learned Judges in the Court below—not having presented itself to their minds—I might have an opportunity of looking with great care through the documents. My Lords, I have availed myself, for that purpose, of the interval which has elapsed, and I have looked with the greatest possible care at every word of those two instruments. I think it very far from clear, upon the first trust deed, that there was an absolute conversion as regards so much of the property as might have remained unsold for the purposes of the debts, and so on. But I do not think it necessary to pronounce any opinion upon that instrument, because I am clearly of opinion that the case depends upon the second deed; and in the second deed, there is not a single word which I can find, which amounts to an absolute conversion before the period of nineteen years shall have elapsed. There may be, before that period, a conversion for certain purposes; but if there should be no such conversion (with which your Lordships will not interfere), then the conversion will take place from that particular period, But, in the meantime, the rents, *qua* rents, are to be disposed of with the greatest possible care, and the estate itself is directed to be conveyed in trust for the parties who are to receive the rents. I think it is perfectly clear, my Lords, though the point escaped the notice of the learned Judges in the Court below, that if it had been drawn to their attention, they would have concurred in the opinion I now express to your Lordships, that till the time specified has arrived, there is no absolute conversion.

What I propose to your Lordships therefore is, that there should be an affirmance of the interlocutor complained of, with this variation, namely, that there should be a declaration (I am confining my observations to the property in the second class) that there is no absolute conversion of the Buchanan Street and Carlton Place property till the expiration of nineteen years, unless, under the other provisions in the second deed, an actual sale shall occur,—in which case, the conversion is to be deemed to have taken place from the time of that sale. With that variation, I propose to your Lordships to affirm the interlocutors complained of.

Mr. Bethell.—Will your Lordships pardon me: There is part of the St. Vincent Street property which is still unsold.

LORD CHANCELLOR.—I am aware of that. I have already delivered myself upon that question. I stated to their Lordships, that the residue of that property must follow the original trusts; and with regard to that, there is no question that there was an absolute conversion.

Mr. Bethell.—With reference to the costs below, the whole would be repaid to us.

Mr. Rolt.—This point, my Lord, was not made in the Court below, and I should ask your Lordships to treat this as an appeal which has failed together.

LORD CHANCELLOR.—It is not a case for costs on either side. It involves a question of great importance; and there is a variation made in the interlocutor. I therefore move your Lordships that there be no costs.

Interlocutor affirmed, with variation.

First Division.—Deans and Rogers, *Appellant's Solicitors.*—Grahame, Weems, & Grahame, *Respondents' Solicitors.*

NOVEMBER 30, 1852.

JOHN EDWARD GEILS, *Appellant*, *v.* MRS. FRANCES DICKINSON or GEILS, *Respondent.* (NO. 2.)

Husband and Wife—Divorce—Domicile—Foreign—Personal Bar—Res Judicata—Lis Alibi—*A domiciled Scotsman married an English lady in Berkshire, and, in consequence of the lady having left his society and gone to England, he instituted a suit against her, in the Arches Court of Canterbury, for restitution of conjugal rights. The wife, in defence, lodged, as it is there termed, a responsive allegation, averring adultery committed by him in Scotland, and praying for divorce, or separation* a mensâ et toro, *the highest remedy afforded in the circumstances by the English Law Courts. The proceedings resulted in the judgment prayed for by the wife.*

HELD (affirming judgment), *that though the procedure by the wife might be viewed as substantially, if not in form, of the nature of a direct suit to obtain such remedy as was competent to the English Law Courts, yet as the parties were to be held, as well from the state of the record as from the principle of* Warrender *v.* Warrender, *subject to the jurisdiction of the Scotch Courts, she was not barred from insisting in an action in the Court of Session for the purpose of there obtaining the larger remedy of divorce* a vinculo matrimonii, *for acts of adultery alleged to be committed in Scotland.*

A wife who has in Scotland obtained a decree of divorce a mensâ et toro *may afterwards apply for decree* a vinculo.

The defender, a Scotchman by birth, was the eldest son of the late Lieutenant-Colonel Geils of Dumbuck, in the county of Dumbarton, succeeded to the estate on his father's death in 1843. The pursuer was an Englishwoman, and was the only child and heir of the late Charles Dickinson of Farley Hill, in the parish of Shinfield-cum-Swallowfield, in the county of Berks. The defender entered the army in the year 1834, and returned from India in the course of the year 1837. He then took up his residence in the mansion house of Dumbuck. In September 1838, he made a temporary visit to England, and married the pursuer there in the course of the following month. Within fourteen days from the date of the marriage, he returned with his wife to Scotland, where they resided, continuously, with the exception of occasional absences in England, till Sept. 1845. In the course of that month, the pursuer left the defender's society, and returned to England, where she resided with her own friends. In October following, the defender instituted proceedings against her in the Arches Court of Canterbury, to whose jurisdiction she was then subject,—the object being to obtain restitution of conjugal rights.

The pursuer appeared as a defendant in that suit. Her pleadings contained what is technically called a "responsive allegation," setting forth various acts of adultery and cruelty by her husband, in respect of which she prayed the Court to grant her a divorce *a mensâ et toro.* She ultimately succeeded in obtaining a decree to that effect. The acts of adultery and cruelty were alleged to have taken place in Scotland. The pursuer then raised in the Court of Session the present action of divorce *a vinculo matrimonii*, on the ground of the same acts of adultery as those set forth in the responsive allegation in the Court of Arches.

The First Division held that the pursuer was not barred from maintaining the action. Thereafter the appellant presented the present appeal, praying that the above judgments might be reversed. The respondent, on the other hand, presented a petition to have the appeal (of the husband) dismissed as incompetent; but the House of Lords, after hearing one counsel of a side, on 8th May 1851, dismissed the respondent's petition, reserving the costs until the hearing of the appeal itself.—(See *ante*, p. 1).

The appeal now came on for decision. The grounds on which, in his *printed case*, the appellant sought to have the interlocutors of the Court of Session reversed, were as follows:—1.

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[1] See ante, p. 1, also previous report, 13 D. 321; 23 Sc. Jur. 137, 435. S. C. 1 Macq. Ap. 255: 25 Sc. Jur. 88.