exactly in the same company as before. It is preceded by the words burnt sugar or other innocent material, and therefore it demands there, I think, exactly the same construction as it does in the first part of the issue, and the appeal made to the sample and the similarity of the sample and the goods furnished, is not merely in regard to the colour of the one and the other as compared, but in the mode of producing that colour, and the material used to produce it. And therefore upon this last point also I think the direction asked by the defenders' counsel was erroneous. That disposes, I think, of the whole of the exceptions which have been taken; and I am therefore for disallowing these exceptions entirely.

Lord Curriehill—I have gone over this case very carefully, and I have arrived at the same conclusion as your Lordship. I have done so quite clearly upon all the points, with perhaps one exception, on which I have felt difficulty, and that is with regard to the 5th exception, for in my opinion it was the duty of the Judge, when called upon, to explain the meaning of the word innocent as used in the issue, so that the jury might be under no mistake as to the question they were answering. But I am also quite satisfied that the declinature of his Lordship to give the explanation has not led to any bad consequences. I think the jury themselves have come to a right conclusion, and that the verdict is a right verdict upon the evidence; and on that ground I think that the mistake of the judge—as I hold it to be—in not giving the explanation that was asked of him is of no consequence in this case.

Lord Deas concurred substantially with the Lord President.

Lord Ardmillan thought that Lord Kinloch would have been right if he had given a judicial construction of the word "innocent." He did not think there had been a miscarriage of justice because the Judge did not give that construction, but looking to the fact that the word "innocent" was not used by the parties on record, but was inserted by parties in the issue with the sanction of the Court, he thought it would have been quite correct and appropriate if the Judge had construed the word at the trial. But then the right construction, and the one which the Judge ought to have delivered, was the construction contended for by the pursuers, and that being so, the defenders could not be allowed to set aside the verdict because a direction adverse to them was not given. On the other points of the case his Lordship concurred with the Lord President.

On the motion for a new trial,

Lord President—There was a rule granted upon the pursuers to show cause why the verdict in this case should not be set aside as being against evidence. Now, in disposing of that rule I confess I don't think it necessary to say anything beyond merely announcing the conclusion at which I have arrived upon a full consideration of the evidence. I am satisfied that the evidence supports the verdict, and that the verdict is perfectly justified by the evidence, and therefore I am for discharging the rule which was previously granted.

The other judges concurred.

Exceptions disallowed and rule discharged.

Agents for Pursuers—Henry & Shiress, S.S.C.

Agents for Defenders—White-Millar & Robson, S.S.C.

Friday, May 24.

SECOND DIVISION.

M'INTYRE'S TRUSTEES *v.* MAGISTRATES OF CUPAR.

Property—Running Stream—Riparian Proprietors—Feu—Medium filum—*Burgh.* Circumstances in which held that a feuar who had a running stream as a boundary under his titles, had a right to interdict proceedings at the instance of the Magistrates of a burgh that would have the effect of debarring him from the use of the stream. Question, How far a proprietor who has a running stream as his boundary has an absolute right of property *usque ad medium filum aquæ?*

The question in this case was, whether the Magistrates of Cupar-Fife were entitled to perform certain operations in the way of arching over and otherwise, on the Lady-Burn, without the consent, and in opposition to the wish of the suspenders.

The suspenders, trustees of the late Duncan M'Intyre, manufacturer in Cupar-Fife are proprietors of some house property and garden ground on the banks of the Lady-Burn. The subjects were acquired by two several dispositions from the Magistrates of Cupar, and are described as bounded by the Lady-Burn on the south. Some time ago the Magistrates of Cupar proposed to arch over the burn for the whole portion of it opposite to the property of the suspenders. The effect of this would be, in substance, that the burn would no longer be the south boundary of the suspenders' property; and the public street would be widened on the other side of the burn so as to bring it up close to the suspenders' south wall. In other words, the property would be bounded on the south by a street instead of by the burn. The suspenders objected to these alterations as illegal and unwarrantable, and brought a suspension and interdict against the Magistrates. By the arching of this burn they said the privacy of their property and the protection it derives from the burn would be interfered with, the course of the burn would be altered and narrowed, and the rights of the suspenders to the water of the burn would be injuriously affected. There would be danger of the property being injured by back-flow of confined water. Farther, the *solum* of the burn, to the extent of one-half, was their property, and the contemplated operations would narrow the *solum ex adverso* of their property. The Magistrates contended that they were entitled to execute the operations complained of, on the grounds—(1) that the suspenders had no right to the burn proposed to be arched over; (2) that the suspenders' property would not be in any way injured; and (3) that the operations were upon burgh property, and necessary for the health of the inhabitants of the burgh.

After a proof the Lord Ordinary (Kinloch) found that the suspenders had a right under their titles to prevent the contemplated operations, and granted interdict as craved. His Lordship was of opinion that the suspenders were in the ordinary position of riparian proprietors. The burn was declared to be their south boundary, and the right thereby given was not affected by measurement or otherwise. It was quite true that their title did not give them any express right to the burn, but the same was the case with almost every riparian pro-

prietor. The right in the stream was in almost every case conferred simply by the declaration that the stream was the boundary, and along with his right in the *solum* of the stream the riparian proprietor had a common right in the water, entitling him, under certain limitations, to use it for all ordinary purposes. Here the suspenders might, if they chose, draw water for domestic purposes from the burn. Their southern boundary was constructed without a door on it, but there was nothing to prevent such a door being opened in it. The respondents must carry their argument the length of maintaining that the burn was so excepted from the conveyance as to deprive the suspenders of all right whatever in the burn, and to leave the whole proprietary right in the Magistrates. In other words, they must maintain that the Magistrates were entitled to divert the burn, or to use up the whole of the water in it, and leave an empty channel. But this could not be maintained on the titles. The reservation in the second disposition, of a right to the Magistrates to dam up the water of the burn in a particular event spoke strongly against the supposition of a retained right of property in the stream; for on the supposition of such a right the reservation was unnecessary.

The respondents had contended that the property in question lay within burgh, which entitled them, they said, to apply to it another than the ordinary rule. But the Lord Ordinary did not see his way, either in fact or law, to give effect to this contention.

The respondents reclaimed.

D. F. MONCRIEFF and DUNCAN for the suspenders.

N. C. CAMPBELL and GIFFORD for the respondents.

At advising—

LORD COWAN—The primary consideration is the state of the title on which the respondents hold the ground in feu from the town of Cupar.

The important clauses are quoted in the note to the interlocutor. It will be particularly observed that in the description contained in the feu-rights, the boundary on *the south* is stated to be *the Lady-burn;* and that as regards certain of the pieces of ground feued, the precise extent and quantity of them are not given in the description. Then as regards the locality. Were it doubtful as matter of fact that the feus in question are within the proper territory of the burgh, it might be right that the charters of the burgh should be ordered by the Court to be produced. As public documents, I apprehend that we could competently issue such order, notwithstanding the objection taken and sustained to their production in course of the proof, on the ground of their not having been put into process before closing the record, although within the power of the Magistrates, and in their custody. But, for my part, I do not consider this at all necessary. I am prepared to hold it established that the burgh territory did extend beyond the feus in question, and that the subjects must be held, as the title sets them forth to be, within the liberties of the burgh.

But holding this to be sufficiently established, the question still is, whether the boundary of these feu-rights on the south being the Lady-burn, this does not entitle them to resist operations which are to have the effect of covering over the burn, and so altering the existing state of the possession. On this question I am of opinion that the Lord Ordinary has rightly disposed of the case by his interlocutor.

The question arises in a process of suspension and interdict at the instance of the feuars to have the Magistrates interdicted from, &c. *See* terms of interdict.

There are two grounds in law on which, as it appears to me, the judgment of the Lord Ordinary may be supported. 1st, That the title of the feuars gives them right to the burn, as the boundary on the south, up to the *medium filum* of the stream; and 2d, that even if no part of the *solum* could be claimed as the property of the feuars, it is still incompetent for the granters of the feu-rights, at their own hands, to deprive their feuars of the burn as their boundary.

On the *first* point the reasoning of the Lord Ordinary appears to me satisfactory. The description in the feu-charters is not of a subject enclosed within walls, or bounded by other subjects specifically described, so as to make this case fall within the category of a strictly bounded title within the burgh. The Lady-burn—which is admittedly a small running stream passing through the burn, and not a public or navigable river—being the boundary, it is vain to say that there is here a bounding charter. And although certain of the pieces of ground are described by measurements this is plainly demonstrative; only, at all events, this does not apply to the ground feued, which is bounded on the south by the Lady-burn. Now, when such a boundary is given the general rule is, that it carries the right of the feuar *usque ad medium filum* of the stream or river. The decision by which this is established need not be cited. The case so strongly founded on at the debate, of *Fisher* v. *Duke of Athol's Trustees*, is a good illustration of the principle. The boundary of a house and garden at Dunkeld, held in feu from the Crown, being the River Tay, was considered to carry the owner's right to the middle of the river. There must be some specialty in the titles or in the locality of the subject to take any particular subject with such a boundary out of the operation of the general principle.

Accordingly, in this case it is contended that the feus are within the royal burgh of Cupar, and that the presumption is that the ground feued was given out merely as a building stance, and with no intention of giving the feuar any right whatever in the *solum* of this small stream. On the same principle it must follow that were the town to feu the ground on the opposite side of the burn with a similar boundary, the stream, as regards the *solum*, would be left the property of the burgh. I cannot adopt that view. It is unreasonable in itself, and at variance with what was assumed both in this Court and in the House of Lords to be the legal right of feuars within burgh of barony, whose boundary *ex adverso* of each other was a stream which ran through the burgh in the recent case of *Becket*. No authority was cited to support the contention of the burgh; and I apprehend it is by misapplying to a case like the present a principle which has been applied to quite a different class of cases—viz., feu-grants containing a special limited description, though bearing the boundary of a public navigable river, or of the sea or sea-shore in questions as to the proprietary right of the feuar to ground interjected between the limited feus and the sea or river, whether by alluvial deposit or by statutory operation. Such are the decisions in *Smart* and in *Tod*.

As to the second ground on which the Lord Ordinary founds, I am of opinion that it is equally conclusive of the right of the parties to have the altera-

tions contemplated by the Magistrates suspended. Here was a boundary given to this property of a running stream, and it was given to the feuar in charters which specifically warranted the possession of it, and the important question is, whether the granters of the feu-rights after giving such a warrant can by possibility alter the boundary without the consent of the feuar. Are they entitled to send the burn away in a different direction? Suppose the feuar has no right in the *solum* of the burn, has he not an interest to maintain the boundary which the magistrates had conferred in the feu-charter? The only answer made to this by Mr Campbell was this—Suppose that the feu had been stated to have been bounded by an orchard or a meadow, or a piece of land, could not the granter of the feu have converted that orchard into arable ground, or have given it out for building purposes? That is all quite true, but that is not the same case as a running stream. A running stream confers certain great advantages on the feuar who is entitled to use the water if he likes for domestic purposes, and to return it to the stream, and he is entitled to approach the water at any part of his feu. But with an orchard the feuar cannot pluck the apples, and he is not entitled to say there shall be an orchard there so that he may enjoy the fruit. And as regards a piece of land, everyone knows that it may be used for all legitimate purposes by the owner of it, even though it should be the granter of the feu. This is a general principle of law for which I have always contended, but, on the other hand, I hold it to be a principle which seems uncontrovertible, that the granter by his own hand giving such a boundary cannot interpose between the stream and the feuar. To do so would I think alter the character of the subject, and injure the property feued out, and I therefore think the complainers are entitled to have these operations interdicted. I think, on the proof here, it is manifest that the operations begun by the Magistrates must have the effect of injuring the wall by which the property is enclosed next the stream, and I think the archway and stones are proved to be pressing so on the wall, so that the wall cannot be taken down by the feuar as he is entitled to take it down. I think there is no speciality in this case to except it from the general rule, and that the Magistrates cannot interfere to alter the title which they have conferred.

Lord Benholme—In this case I am rather anxious to state the precise ground on which my judgment rests. Though in the result I do not differ, I cannot agree with some of the grounds on which the judgment is proposed to be given, and, in particular, the leading ground on which the Lord Ordinary rests appears to me to be singularly inapplicable to the present case, namely, that by the titles of this feu the property extends *ad medium filum*. I do not think it is a universal principle that every man whose property is bounded by a stream has a right to go to the middle of the stream. On the contrary, I think it is only in certain circumstances, and especially where there are mutual properties having the common boundary, it forms a necessity of the case that you give to each an interest in the stream to one-half of the channel; but in the present case I think the very terms of the title exclude the feuar from any portion of the channel. I think it is clear that it is the margin of the Lady-burn which is described in these titles as the boundary. The property is no doubt said to be bounded by the Lady-burn, but I look on it as a general rule that the property only comes up to the boundary, and that general rule seems to be confirmed by the boundary title in other respects that I cannot hold that there is any extension to the *medium filum*. I look on it that it is always a question, where the property is bounded in this way, who competes with the feuar on the other side, so as to determine whether he has a right as a riparian proprietor; and I think the circumstances and description of the case seem to exclude that question altogether. I am anxious to state this as a principle, though it does not affect the decision of the case. In the next place, I do not found on the supposed right of a proprietor who has a boundary that that boundary shall always remain on the same condition. On the contrary, I rather think that the general rule is that the tenement by which he is bounded is just as free to the neighbouring proprietor—to alter according to circumstances—as any other property; and that in fact the supposition that a running stream stands in any different situation appears to me to be a mistake. But I think there is a third ground on which we must decide this case, namely, that there is positive injury done to the property by these operations; and it is on that ground I am quite prepared to sustain the interlocutor of the Lord Ordinary and interdict these operations.

Lord Neaves—I arrive at the same conclusion, but I participate in some degree in the doubts expressed by my brother Lord Benholme, though perhaps I do not go so far in opposition to the Lord Ordinary's view with regard to the question of property which is here alleged. This is a case of suspension for preserving matters intact, as they were recently before the suspension was brought, and before the operations complained of were begun. It is not an action of declarator on either side, and it is enough for us if we find in the suspender any right which, whether it be of a higher or of an inferior description, is sufficient to entitle him to stop what is going on. I do not think the Court is called on to adjudicate nicely what the nature of the right is, provided they see that, in the lowest form in which it exists, or can exist, it is such as to entitle them to interdict their proceedings. That seems to me to be sufficient for a case like this. We might be called on in a case of another kind to arrive at a more precise pinion on the question of absolute right, but that is not *hujus loci* in this case. The Lord Ordinary goes on the supposition that the feuar is proprietor *ad medium filum*. I do not wish to give an opinion on that point. I think it is one of considerable dubiety. Notwithstanding all the decisions we have about water, I think there is considerable obscurity attending the law on that point. The general rule is, that the thing which is the boundary, if it be not practically a mathematical line—a line which to all intents and purposes has no breadth—is not within the limits of the subject bounded. If the property be bounded by a road, it excludes the road. If bounded by a ditch, it would raise a nice question whether the boundary ran to the middle of the ditch, or only to the lip or edge. A good deal must depend on the circumstances of each case. If bounded by a wide stream, it literally means that where the stream begins the property ends. But, on the other hand, I am not satisfied that there has not been a practice in conveyancing which has regulated the interpretation of it in the case of a stream somewhat differently. I look on the matter as one of considerable difficulty, and I am not dis-

posed to rest the case on that ground. If this stream were by natural causes to disappear, or be diverted in some way or other, I am by no means prepared to say that these parties would be entitled to lay hold of the channel to the extent contended for, but I consider they have inferior rights which are quite sufficient to protect the *status quo*. I am very much inclined to think that though there may not be a property, there is such a natural easement in the stream that runs along a property that the proprietor has some use of it. It may not be according to strict principle, but I am inclined to think such a right exists, and certainly I am inclined to hold that such a right should be protected, where we see any exercise of that right as, I think, is proved in this case. I cannot conceive that the Magistrates, supposing the stream were in the state that it could be used for domestic purposes could get any remedy against suspenders here for drinking of the stream. Suppose that, by rising very early in the morning, they could have found the stream pure; suppose that they could have got up before the pollutions of the day began; or suppose that by sanitary measures the pollutions were to be put a stop to; or suppose they have a taste for drinking the water of the stream just as it is, and that they like bad water better than good—for that is the doctrine promulgated with respect to certain mixtures employed for convivial purposes—it would require a very strong case to convince me that the Magistrates, having granted such a feu, could interdict the persons living on the banks of the stream for taking a cup of water and using it for any simple domestic purpose. Now, if there be a right of that kind at all to use the stream for any purpose, as an adjunct of the property; if there be such an easement, or servitude, or privilege of whatever kind, it should not be interfered with. Now, I think such a privilege exists here, and has been exercised, and I think there is a material encroachment on the substantial and beneficial position these suspenders occupy, and I think the nature of the operations proposed is such as almost to encroach on the property itself by abutting on it; and therefore, without going further into the question, I am for adhering to the interlocutor. One thing I feel a delicacy about—I do not understand the last part of the petition for interdict, and I am much averse to granting interdicts in terms of which I do not know the meaning; I refer to the words—"and also from interfering with, invading, or encroaching upon the said property, and from prejudicing or affecting in any way the rights of the complainers therein." What is there that has been done to require us to give this general interdict, and what kind of breach of interdict is likely to arise from it.

Mr Duncan (for complainers)—I think that part of the interdict was intended to refer to the operations applicable to building operations—to building up the arch against the garden wall.

Lord Neaves—I think we would be put at great disadvantage to grant general interdicts, and I think, therefore, this tag ought to come away.

The Lord Justice-Clerk—I was desirous to hear your Lordship's views before I expressed my own, as I had been counsel for one of the parties in the case. The observation your Lordship has just made with respect to the somewhat indefinite nature of the application I rather concur in, and I think it would be desirable to make it more explicit. With respect to the observations of your Lordships as to the propriety of expressing an opinion or coming to a judgment on the point on which the Lord Ordinary has practically decided this case, I venture to differ. It appears to me to be a matter of very considerable importance with a view to the determination of this case, whether the Magistrates are to be viewed as proprietors of the *alveus* of the stream, or whether they are to be regarded only as proprietors *ad medium filum*. In reference to easements it is in proof that offers were made on the part of the Magistrates to accommodate all the wants and requirements of the feuar in reference to the supply of water, and therefore that might introduce a different element into the consideration of the case, and if one comes to a clear conclusion that in point of fact the Magistrates are not proprietors of that portion of the stream which is next adjacent to the property of these suspenders, I think it is right that that opinion should be expressed, and for my own part I am perfectly prepared to found the judgment to be pronounced in this case on that ground. It is perfectly true, as your Lordships, my Lords Benholme and Neaves, have remarked, that there is a certain anomaly in the boundary extending within the limits of the very subject which is said to constitute the boundary, but it appears to me to have been fixed as a special principle in connection with the interpretation of boundaries in the case of private streams or private lakes, that the proprietor of the banks is *eo ipso*, and by virtue of that right, proprietor of the *solum* of the stream *usque ad medium filum aquæ*. I find that principle recognised to the extent of determining a very important series of questions in the Digest, where in the 41st Book, title 1st, it is laid down that, in the case of a private stream, if an island shall spring up within that half of it which is next to one of the proprietors, the property shall not be common to the proprietors, but shall appertain to the proprietor, who is adjacent to that part of the margin of the stream, and it is stated that the extent of the property will depend on the extent of the island, in so far as *ex adverso* of his lands as far as it may be measured by the *medium filum*. I find the same doctrine adopted in other countries. It forms an express provision of the Code Civile, Article 561. I may mention also that in a case which was referred to in the English Courts, it is laid down most explicitly that, *prima facie*, in the absence of evidence, which shall redargue the presumption thereby arising, the proprietor of the land on the margin of a private stream is proprietor of that stream up to the centre. Now, when we look to our conveyancing in Scotland, and when we consider the question with reference to the interpretation which has been given of the grounds which are expressly conveyed, can we doubt that it is so recognised here? Will anyone point to a single case in which, where a property was given adjacent to a private running stream, there was an enumeration in the face of the conveyance of the number of yards, or feet, or inches that were unquestionably meant to be conveyed in the *solum* of the stream itself? When you intend to give a property in the *solum*, according to the rules of conveyancing you accomplish that object if you give no more than a right of property to the margin of the stream, with the description of a river boundary. Now, I asked myself, on the consideration of the titles in this case, why a different interpretation should be given here. There has been an attempt made to show in this case that the property is not within the territory of the burgh of Cupar. I am of opinion that it must be regarded

as being within the burgh, for though the proof is conflicting, I think the Magistrates have established the fact that the property is within the burgh. I do not hold, with Lord Benholme, that because the other side is not occupied by a similar feu, you cannot come to the conclusion of dividing this stream, because supposing the Magistrates had feued it, and in the same terms, the result would unquestionably have been the division of the subject. I may say, moreover, that I do not consider, with reference to a subject of this kind, which appears to be a considerable extent of ground, it is to be dealt with as a mere stance for the house. I think it is of the nature of a villa subject; and with reference to villa subjects, I should apprehend that the vicinity of a stream, which whatever its character may be at the present day, at the time these grants were made, does not appear to have been otherwise than pure and limpid, would be a consideration to a man who is to build. So far as the actual fact is disclosed it would appear that the principal portion has been laid out as a garden, and as regards a garden it must make a considerable difference whether you are on the margin of a running stream, or whether you are to have thrown over the space immediately opposite your garden a stance for carts on market days. I agree, therefore, with your Lordships in holding that there has been here an innovation of the original grant to the effect of it being an attempted substitution of a boundary differing essentially in its nature and conditions. In point of fact the effect of these operations is plainly making the boundary not the stream, but the 14-inch abutment on which the archway of the bridge is to be raised. The feuar will therefore no longer be able to get at the stream, which is said to be his boundary, but will have interposed between him a wall of thickness sufficient to deter him from getting at the water. No doubt it is said you should not have built your wall there. That is another matter. It seems to me the wall so built might be altered if the feuar pleased, or he might have made other arrangements, and therefore I think, independently of the question of property, as to which I agree with the Lord Ordinary, there is here an invasion of a right, against which the party is entitled to obtain redress. I think the party has the rights of a riparian proprietor, and that this is an attempt to exclude him from the stream, and that therefore these are operations which cannot be justified. I think therefore there are clear grounds on which this interlocutor of the Lord Ordinary's should in its substance be maintained. I hold, in the first place, that the property is clearly vested in these suspenders, and, in the second place, that the operations involve an alteration in the essential condition of the boundary, and an alteration which is injurious to these suspenders.

The Lord Ordinary's interlocutor was accordingly adhered to, subject to a modification in the prayer of the petition for interdict as referred to in the opinion of Lord Neaves.

Agents for Suspenders—Jardine, Stodart, & Fraser, W.S.

Agent for Respondents—W. Mitchell, S.S.C.

Friday, May 24.

LANG AND HUSBAND *v.* BROWN AND OTHERS.

Husband and Wife—Postnuptial Settlement—Mutual Conveyance — Onerosity — Power to Revoke—Liferent—Fee—Spes successionis. Held that a mutual conveyance by spouses of their property which should be possessed at the time of death to one another in liferent and to a third party in fee, with a reserved power to revocation during the joint lives of the granters, imported no more than a *spes successionis* in that party, and a gratuitous conveyance made by one of the spouses after the death of the other, to the prejudice of the fiar under the mutual settlement, sustained as valid.

The late Robert Marshall and his wife executed a mutual postnuptial settlement with a view "to regulate their respective successions," by which the husband conveyed to the wife in fee all the property of which he should be possessed at the time of his death; and the wife, on her part, conveyed all the property of which she was or should be possessed at the time of her death to the husband in liferent and her daughter by a previous marriage, the pursuer, Mrs Lang, in fee, power of revocation being reserved to both parties during their joint lives. Mrs Marshall survived, and subsequently made a gratuitous conveyance of all her property to her sister, the defender Mrs Brown. Mrs Lang brings a reduction of this conveyance, on the ground that the provision in her favour, contained in the settlement of her mother and Mr Marshall, was onerous, and could not be defeated by a gratuitous deed, and that under it she was entitled to all the property of which her mother died possessed.

The Lord Ordinary (ORMIDALE) sustained this contention, and reduced the deed.

The pursuers reclaimed.

D. F. MONCRIEFF and MACKENZIE, for them.

SOLICITOR-GENERAL and CRICHTON, in answer.

At advising—

LORD COWAN—The deed under reduction was executed by the now-deceased Mary Murray or Marshall, of date 4th September 1852. It conveys irrevocably certain heritable subjects situated in East Regent Street, Glasgow, to the defenders in liferent and fee respectively, under reservation of the granter's own liferent. It was followed by infeftment, the instrument of seisin being expede and duly recorded the same date with the deed. While the conveyance in fee took instant effect, the subjects remained in the possession of Mrs Marshall under her reserved liferent until her death. This occurred shortly previous to the institution of this action in 1865.

It is not disputed by the defenders that this deed was gratuitous. The narrative states in express terms that it is granted for "love and favour which I have and bear to my sister" and to her children, to whom in liferent and fee the subjects are conveyed. And although "other good causes and considerations" are mentioned, the argument, it is conceded, must proceed on the footing of the conveyance being purely gratuitous.

The pursuer is the only child of Mrs Murray or Marshall, by her first marriage to William Gillespie. This marriage was dissolved by Gillespie's death in 1832. Something is said in the record as to the property which the pursuer's father, Gillespie, possessed at his death, and as to his widow's (after Mrs Marshall) intromissions therewith. But it is to be kept in mind that in the present action we have nothing whatever to do with these matters, or with any question connected with Gillespie's affairs. The whole statements of that kind are quite irrelevant, as will be immediately apparent.

Mrs Murray or Gillespie was married to her second husband Robert Marshall in 1833; and it is