facturer who first rented his building and afterwards bought it, or suppose he rented another along side of his own, and moved the machinery backwards and forwards between them, how would the rights of heirs and executors be extricated? Would they change with each of these changes of circumstances? I think not, where there is no attachment so strong as to be supposed permanent, and no indication of intention, there will be no change in the character of the subject.

Applying these principles, I propose that we should hold numbers 1, 2, 3, 4, 9, the circular saws under 10, and the hydraulic press under 12, to be heritable. They fall under the first principle, being so attached that they cannot be removed easily, readily, and without injury.

The other objects are implements of trade which were never so fixed, and were not placed there for the purpose of adding to the value of the heritable subject. They were mere implements of trade, which remained personal, and therefore to be divided among the personal representatives.

Lord Neaves—Various elements must be taken into consideration and distinguished from each other in deciding questions of this kind. The element of trade may predominate, as in questions between landlord and tenant, or, as in the present case, the matter may relate to the mere domestic administration of estates. The intention of the deceased is often an important feature in determining the right of his successors. The subjects may be *in cursu* of being dedicated to the soil—materials, for example, collected for the purpose of repairing a building; such a distinction will receive effect. Similarly also, if the machinery is brought to a place for the purpose of working out the fruits of the lands, such as minerals. The result, however, is different when the machinery is placed in a heritable subject only for the purpose of making it the scene or *locus* of a trade—that is what was done in this spinning mill.

Under the old law, by which the style of conveyance of heritable moveable property was different, I cannot doubt that if a man bequeathed the machinery in this mill by his testament it would have received effect, and I think the same principle applies though this gentleman has left no written declaration of his intention, and that this property, with the exception proposed by your Lordship, should be distributed in executry. They have been brought into the mill for the purposes of the trade—that is for a temporary purpose—and they can be detached without injury.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the Special Case, are of opinion and find that the articles under the following numbers in the inventory attached to this case, that is to say, Nos. 1, 2, 3, 4, and 9, and also the circular saws under No. 10, and the hydraulic packing cases under No. 12, are heritable, and that all the other articles in the said inventory are moveable, and that the same are to be held and treated as such respectively, and decern; find that the expenses of each party must be paid out of their share of the succession, and remit to the Auditor to tax the same and to report."

Counsel for First Party. Watson and Kinnear. Agents—Webster & Will, S.S.C.

Counsel for Second Parties—Balfour. Agents—Maclachlan & Rodger, W.S.

Thursday, July 16.

FIRST DIVISION.

[Sheriff of Lanarkshire

ROBERT ROBERTSON AND ALEXANDER M'CASLAND *v.* NORTH BRITISH RAILWAY COMPANY.

Feu—Restriction—Title.

Two parties as singular successors held adjacent feus, forming parts of one subject originally given off by the superior. The one was admittedly subject to a restriction in the nature of a servitude which had been from the first inserted in his title. In the title of the other party there was a reference to the stipulations in the original feu-contract applicable to the whole subjects, but the said restriction was not expressly inserted therein. *Held* (*diss.* Lord President) that the latter party had a sufficient interest to enforce the restriction against the former.

The main object of this action, as stated in the prayer of the petition, was "to interdict, prohibit, and discharge the respondents, jointly and severally, or severally, from using their said lands, or any part thereof, for depositing dunghills, and from laying any dung upon the same (except while collecting the fulzie thereof in dunghills in the back ground belonging to the houses thereon till the same can be carried off, or for the purpose of being consumed on and being manure to the said ground) and from depositing and loading or discharging dung or manure at said depot or lye, or at any depot or lye formed or erected, or to be formed or erected, on said lands, and to ordain them, jointly and severally, or severally, to remove said depot or lye for the deposit or for the loading or discharging of dung or manure not collected as aforesaid, and to interdict, prohibit, and discharge them, jointly and severally, or severally, from afterwards forming a depot or lye for depositing and loading or discharging dung and manure not collected as aforesaid."

The Sheriff-Substitute found, *inter alia*:—"That under the original feu contract to M'Kechnie and Ross it is provided that it shall not be lawful for them to let or use any part of the ground 'for depositing dunghills, or to lay any dung upon the same, except while collecting the fulzie thereof in dunghills in the back ground belonging to the houses thereon till the same can be carried off, or for the purpose of being consumed in and being manure to the said ground:' That the respondents, the North British Railway Company, have been loading at these sidings, *inter alia*, the city manure, which is brought out in carts, and which, after having been for a day or two at the first placed in a heap, has been since then loaded direct from the carts into trucks, which generally remain over night and are taken away next day: That the petition is partly directed against the use of the ground by the railway company for their manure traffic as an

infringement of the above stipulation: That as regards the manure, it is clear that the respondents, the North British Railway Company, began to lay manure in heaps, constituting an infringement of the clause in the titles, and thereby justifying the petition to that effect; that what they have since done and are now doing is not an infringement of the terms of the stipulation, and though somewhat against the spirit of it, is hardly so clearly so as to justify the Sheriff-Substitute in stopping or seriously impeding the manure traffic, under the present petition; as it must be clearly held in view that no question of nuisance whatever is raised in the present action, but simply a matter of contract under the titles; therefore declares the interdict as formerly granted under the interlocutor 22d August 1871 and 9th October 1872 (to which reference is hereby made), as regards the strip of nine feet wide outside the petitioner's west wall, and as regards the depositing of manure in the ground acquired by the North British Railway Company from M'Casland, perpetual."

The railway company appealed to the Sheriff, who adhered, and they then appealed to the First Division.

They pleaded, *inter alia*—"The petitioner has no title or right to enforce against the respondents the alleged servitude, which, if and so far as existing, was constituted in favour of the superior, and is only enforceable by him or by a party deriving express right from him, which the petitioner does not do. The land in question having been acquired by the company under their statutory powers, and being intended to be used by them solely for and in connection with the purposes (mentioned) authorised by the Acts referred to, the interdict craved should be refused."

Argued for them—The petitioner's title to sue was defective. He was not under a community of obligation, and so was not entitled to a community of right. No restriction can be imposed on property unless it enters the sasine *ad longam;* mere reference is not enough. As matters stood, the lands belonging to the petitioner Robertson were not affected by the restriction, whatever might have been intended and whatever might happen in the future.

Authorities—*Cockburn* v. *Wallace*, July 1, 1825, 4 S. 128; May 23, 1826, 2 W. and S. 293; *Coutts* v. *Tailors of Aberdeen*, Dec. 20, 1834, 13 S. 226; *Gould* v. *M'Corquodale*, Nov. 24, 1869, 8 Macph. 165; *Croall* v. *Mags. of Edinburgh*, Dec. 20, 1870, 9 Macph. 323; *M'Gibbon* v. *Rankine*, Jan. 19, 1871, 9 Macph. 424; Menzies' Lectures, 581, 2d ed., 600, 3d ed., and authorities there quoted. Montgomerie Bell's Lect., 574; *Campbell* v. *Dunn*, March 4, 1824, 6 S. 679; *Gall* v. *Mitchell*, M. 10,306; *Campbell* v. *Clydesdale Bank*, June 19, 1868, 6 Macph. 943.

Robertson pleaded, *inter alia*—"The respondents having informed the petitioner that it was their intention to use the depot and lye being formed on said lands for the deposit and for the loading and discharging of dung and manure, in contravention of the prohibition in their titles, and to the injury and loss of the petitioner, he is entitled to interdict as craved."

Argued for him—He had an interest to enforce the clause of restriction in the feu-charter of 1808 against the Railway Company. The restriction had been carried down through the whole series of the Company's titles. Where a condition is inherent in a right it continues enforceable even though it does not appear in the vassal's titles.

Authorities—*Alexander* v. *Stobo*, March 3, 1871, 9 Macph., 599; *Hutton v. Macfarlane*, Nov. 11, 1863, 2 Macph. 79; *Mackenzie* v. *Carrick*, Jan. 27, 1869, 7 Macph. 419; *Hope* v. *Hope*, Feb. 20, 1864, 2 Macph. 670; *Thripland* v. *Rutherford*, May 10, 1848, 10 D. 1079; *Mags. of Edinburgh* v. *Macfarlane*, Dec. 20, 1857, 20 D. 156.

At advising—

Lord Ardmillan—As I understand the present position of this case, there is no question now in regard to the servitude road, and much of the statement on record is inapplicable to the only point now before us, which I understand to be the claim by the petitioner for interdict against the deposit of dung and fuilzie on the back ground belonging to the subjects possessed by the railway company.

This interdict has been granted by the Sheriff-Substitute and by the Sheriff. In my opinion it has been rightly granted.

There is certainly a legal question of difficulty involved in the case. But that difficulty does not relate to the obligation of the respondents in regard to the deposit of manure, or to the fact that they have been, and were when interdict was demanded, depositing manure in breach of their obligation. The existence of the restriction in the respondents' titles is beyond question, and the fact that they have disregarded it is not disputed. If the petitioner is entitled to interfere, his success is certain. The difficulty, which is considerable, and which turns on very delicate considerations, relates to the right of the petitioner to challenge the proceedings of the respondents, or to enforce against them their obligation, or obtain interdict against the breach of it.

Mr Scott of Aitkenhead, and Mr Archibald Graham, banker, granted a feu in 1803 to the respondents' authors, M'Kechnie and Ross, and in that feu-contract, which is the foundation of the respondents' title, it is expressly provided—"that the said William M'Kechnie and Walter Ross and their foresaids, shall not suffer any dirt, nuisance, or rubbish to be laid down betwixt the houses," &c., "and that it shall not be lawful for the said William M'Kechnie and Walter Ross or their foresaid, to set or use the said ground, or any part thereof, for the depositing of dunghills, or to lay any dung upon the same except while collecting the fuilzie thereof in dunghills in the background belonging to the houses thereon till the same can be carried off, or for the sole purpose of being consumed on and being manure to the said ground."

There is no doubt that in point of fact the respondents have, contrary to the stipulation in their titles, deposited manure in a manner and to an extent which cannot be brought within the exception stated in the feu-contract. That proceeding on the part of the respondents is certainly illegal. If the petitioner is entitled to challenge that deposit, there can be no doubt that the interdict has been rightly granted. No separate question of nuisance has been raised. But it is not altogether to be lost sight of that the stipulation in the feu-contract is a protection against nuisance, and therefore a restriction on which the law cannot look otherwise than favourably.

The petitioner's own title is derived from per-

sons of the name of Smith and Hyslop, who acquired another portion of the land feued originally by Mr Scott and Mr Graham to M'Kechnie and Ross. In the title to the petitioners' authors there is an express reference to the stipulations in the contract of feu in favour of M'Kechnie and Ross, and the subjects so acquired by Smith and Hyslop, and now belonging to the petitioner, were held under the burdens stipulated in that original feu-contract.

If the restriction in regard to deposit of manure, which was in the original contract, and which is throughout referred to in the petitioner's titles, had been inserted in the sasines expede in the progress of these titles, the case before us would bear a very strong resemblance to the cases of *M'Gibbon* v. *Rankin*, Jan. 19, 1871, and *Alexander* v. *Stobo*, March 3, 1871. I remain of the opinion which I expressed in both of these cases, and I shall not trespass on your time by repeating that opinion,—I simply remark, in a single sentence, that where, in titles originally springing from the same person, there is an undoubted and substantial interest in one feuar to enforce a restriction such as this, partaking of the nature of a servitude, against another feuar, the law will recognise a title available and sufficient to support his interest and to enforce the restriction. It is not, however, on light grounds that such a rule, favourable to the enforcement of restriction, can receive effect. There must be a clear interest of a substantial character to enforce the restriction, which cannot be enforced *in emulationem vicini*, and that restriction must be of the nature of a servitude, and of an apt and reasonable character in regard to the position and relation of the premises. This was the nature of the restriction, and of the interest to enforce it, in the cases of *M'Gibbon* and *Alexander*. It is still more clearly so in the present case. Whether the right to enforce such a restriction originates in the principle of *jus quæsitum tertio*, or arises from implied contract in mutuality of obligation and interest, it is rather difficult to determine. It may be that, like a stream flowing from two separate fountains, the united waters may be referable to both, and that something of both principles may be inherent in the proposition which the law recognises; but whatever may be theoretically the origin of the law laid down and applied in these cases, I entertain no doubt that, for practical purposes, that law is well and equitably settled.

The question therefore is, whether the petitioner is under a restriction the same as the respondents, so as to create mutuality of interest and obligation such as existed in the cases of *M'Gibbon* and *Alexander*?

The petitioner himself is not denying the obligation or refusing to recognise the restriction; but the respondents, in order to get rid of the mutuality, plead that the liability which the petitioner accepts does not rest on him. I do not think that the respondents are right in this contention.

The premises in this case are in a city, and in close vicinity, and in these circumstances there must be a common interest, at least, in regard to a prohibition to deposit manure—that prohibition being plainly of the nature of a stipulation for protection against nuisance.

But then, it appears that the restriction which is in the feu-contract has not been inserted in the sasines in the petitioner's titles. It is said that he is therefore not liable to the superior, but is relieved from the restriction, and that the mutuality of obligation and relative interest is thus destroyed. This has been very strongly urged by the respondents. I have carefully considered the argument and the authorities, and I have arrived at the conclusion that the plea of the respondents is not well founded.

The superior is not, indeed, a party to this cause. But in dealing with the question raised by the respondents' plea we are dealing with that which involves a question between superior and vassal—we are considering the petitioner's relation to the superior. There is no question here such as was raised in the case of *Maitland* v. *Horne* and in the case of *Sinclair* v. *Breadalbane*, where the superior of the lands was not the party to the action, nor was the relation of the vassal to the superior involved in the action, but where an obligation was sought to be enforced against the personal representative of the granter. The distinction between these two cases, decided in the House of Lords between parties who did not stand to each other in the relation of superior and vassal, and a case where an obligation by superior to vassal, or by vassal to superior, is tried, as in a question between superior and vassal, was fully considered in the case of *Stewart* v. *The Duke of Montrose*, 15th February 1860. I humbly think that this distinction is well founded, and is of the greatest importance. Where the relation of superior and vassal has been retained, the obligations are reciprocal, and an obligation on either side, by the one party to the other, remains, in my opinion, effectual and enforceable; the right to enforce is, in such a case, carried by the ordinary assignation of writs, and as between the superior and the vassal, the mutual obligations remain, I think, effectual. If the petitioner, as vassal at present unentered, were to apply to the superior for an entry, I think that the superior would be entitled to refuse him an entry if he demanded a charter omitting this restriction, and discharging this obligation in regard to the deposit of dung. By omitting to insert the restriction in his sasines the vassal could not put an end to the restriction or extend his own right. The obligation on the petitioner, as on the other feuars, is for the benefit of all the feuars, and is, to refrain from depositing the manure. The omission of the obligation, if it had the effect of discharging the restriction, would be an extension or augmentation of the vassal's right; and that extension he could not effect by his own act in the omission of the restriction from the sasines. If necessary, I am inclined to go farther than this. I rather think that the superior, having by feu-contract laid the obligation and restriction on several feuars,—that restriction being of a most natural, reasonable, and usual kind in a town, and tending to make the possession of each feu more pleasant and valuable,—he could not with effect, or in justice to the other feuars, discharge the restriction from the title of one of the feuars to the prejudice of the rest, so as to create inequality and to destroy the mutuality of right and obligation. But it is sufficient for the present to say that the vassal, when brought into contact with the superior in a demand for an entry, could not escape from this restriction. He is not free from the restriction, and does not seek to be free, and the

fact that he is under the restriction gives him the interest and the right. If so—if there is on the part of the petitioner an existing obligation to obey this restriction—then both feuars are on the same footing, and consequently the petitioner has a mutuality of right and obligation sufficient to sustain the manifest interest which he has to enforce it. The peculiar nature of the prohibition against operations within a town approaching at least very closely to a nuisance, is not to be left out of view. It is, I think, settled by many decisions that a negative servitude of a well understood kind may be effectual as a condition qualifying the right, without entering the records as a real burden. Now, on this separate ground, I am disposed to think that this restriction, having regard to its nature and operation, may reasonably and legally be held as a condition of the right—a condition qualifying the right and passing with the right into the hands of a singular successor.

It is true that, as a general rule restrictions on the use of property are not to be presumed, or implied, or extended by inference. That I fully admit. But where the restriction is of the nature of a servitude, and is natural, usual, appropriate, and almost necessary to the due possession of the other feus, and is distinctly stated in the original feu as an abiding and real burden, then I think it is a proper condition of the right, which is effectual though it has not entered the records as a real burden.

In the very able and instructive opinion prepared by Lord Corehouse in the case of *Coutts* v. *The Tailors of Aberdeen*, the distinction between a restriction of this kind and such stipulations as require to be made real rights, and to enter the records, is very fully and clearly explained. It is there stated that "an obligation to carry off the eaves-drop or to lay a foot pavement, is a real burden, though not declared so in express terms nor fenced with irritancy." Again, a case still more analogous to the present is stated by Lord Corehouse (Robertson's Appeal Cases, 296)—"a prohibition to tan leather, to refine tallow, to make candles, to slaughter cattle, are all of a nature to bind singular successors, without being declared in express terms to be real burdens or fenced with irritancy, because they are lawful conditions of the grant." This opinion was approved of in the House of Lords, where the judgment was affirmed. The principle of this judgment is, I think, sound and important.

No restriction could, in my opinion, be more natural, reasonable, and appropriate than the restriction in this case. A neighbour holding house property originally part of the same feu, and subject to the same restriction, seeks to prevent the respondents from depositing dung on the premises in a manner and to an extent obviously offensive and inconvenient. If this neighbour, the petitioner, is himself bound by the same restriction, the case falls within the principle of the decisions in *M'Gibbon* and *Alexander*. Unless the petitioner could deposit dung on his own premises contrary to this restriction, he is in a position to enforce it against the respondents. I am of opinion that in relation to the superior, the petitioner is substantially bound; he could not have discharged the restriction and extended his own right by omitting the restriction from the records; and he does not allege or suggest that he is free from the restriction. I am further of opinion that this particular restriction within a town is so natural and appropriate, and indeed so necessary to the mutual use and possession of the premises by the feuars, that it may be held in law as a condition of the grant, effectual although not inserted as a real burden in the sasines.

Accordingly, I think that the Sheriff has rightly determined the question of interdict, in so far as regards the deposit of manure.

Lord Deas concurred with Lord Ardmillan.

Lord President—My Lords, this is a question of very considerable nicety, and I agree with so much that your Lordships have said that I am sorry that I find myself unable to agree with the whole of it. The question may be stated thus, whether the well known rule of law laid down in the cases of *Gould* and *M'Gibbon* is applicable to the present case. When a superior feus out subjects in a town, and the same restrictions are laid upon the feuars in each case, there arises a mutuality among them which depends on the community of the burden under which they are laid by the superior, and if they are similarly bound, they have rights *inter se*. But the circumstances here are peculiar. In 1803 a contract was entered into between Scott & Graham on the one hand, and M'Kechnie and Ross on the other, but the estate so created was never feudalised in the persons of the latter. They sold the ground in parts, of which one portion came to the predecessors of the North British Railway Company, and another to the predecessor of the petitioner Mr Robertson, and a disposition and assignation was granted under which the purchasers took infeftment on the precept contained in the feu charter. The restriction sought to be enforced here was engrossed in the infeftment of the predecessors of the North British Railway Company, but not in that of Mr Robertson's predecessors, and the feu subjects having passed through a variety of hands, both parties are now in the position of singular successors. The question therefore is whether the restriction is binding against Robertson as a singular successor, for if it is not he can have no title to enforce it against the Railway Company. There is no question raised here of nuisance; I dismiss that altogether, for it is a question which depends on a variety of other considerations with which we are not at present concerned. Again, we are not here dealing with any of the known servitudes; but we have what is undoubtedly a restriction on the use of property, and the ordinary rule is quite established that unless such a restriction enters the sasine it will not pass against singular successors. I do not say that if it were merely a case of omission in one infeftment in a charter by progress, that the restricted party would be exempt if the restriction had been originally feudalised—and so all writers lay it down as the duty of the superior to see that all burdens enter the infeftment. I can find no ground for saying that the majority of the Judges in the case of *Coutts* drew any distinction as to different classes of burdens. Lord Corehouse certainly says that some may be effectual and some not, but in order to be effectual at all they must all enter the record I cannot get over the difficulty here. It seems to me that Robertson is not subject to the restriction, and so has no right to enforce it, and that he never can be put under it except by his own consent. The superior cannot make him consent—to say that would be to say that the restriction will pass against singular successors without entering the record. I am sorry that I must decline to concur with your Lordships.

The Court pronounced the following interlocutor:—

"Find, in point of fact, that recently, before the petition and complaint by which the present proceedings originated, had been presented in the Sheriff Court, the North British Railway Company had used the ground in dispute as a dunghill for depositing the police manure or fuilzie, which was intended to be carried away *ex intervallo* by means of the railway; find, in point of law, 1st, that this was a breach or infringement of the clause in the contract of feu and ground-annual, of date 29th April and 14th May 1803, and recorded in the Books of Council and Session on 19th November thereafter, which contract contains the whole ground of which part now belongs to the North British Railway Company and part to the original complainer (respondent in the appeal) Robert Robertson, and which clause is binding and obligatory on the said railway company; 2d, that, having reference to the title-deeds of the parties, including the terms of the clause in dispute, and the nature of the breach or infringement complained of, the said Robert Robertson had and has sufficient title and interest to object to that breach or infringement; and no questions having been raised by either party under this appeal, except as regards the use of the ground in dispute in the first place as a loading stance for the railway, and, in the second place, as a dunghill or place of deposit for fuilzie as aforesaid, Refuse the appeal, and decern; find the respondent Robert Robertson entitled to expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Robertson and M'Casland—Dean of Faculty (Clark) Q.C., Marshall and Laidlay. Agents—Morton, Neilson & Smart, W.S.

Counsel for North British Railway—Scott and M'Kechnie. Agents—Hill & Fergusson, W.S.

M., Clerk.

Friday, July 17.

FIRST DIVISION.

W. PITT DUNDAS AND THOMAS BRODIE, PETITIONERS.

Interim Appointment—Intimation to the Lord Advocate.

This was a petition for the appointment of an interim keeper of the Privy Seal, the office being vacant by the death of the late Earl of Dalhousie. The Court held that intimation to the Lord Advocate was not necessary, and pronounced the following interlocutor:—

"The Lords having considered this petition, nominate and appoint the petitioners to officiate jointly and severally as interim Keepers of the Privy Seal in place of the deceased Earl of Dalhousie, in terms of the prayer of the said petition; and appoint the petition and this deliverance to be recorded in the Books of Sederunt."

Petitioners' Counsel—G. S. Dundas. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Saturday, July 18.

FIRST DIVISION.

[Lord Gifford, Ordinary.

TODD *v.* MACKENZIE.

Succession — Destination — Heir-at-Law — Marriage-Contract.

In the marriage-contract of his daughter, A disponed his heritable estate to himself in liferent for his liferent use allenarly, and to his daughter "and the heirs of her body, or her assignees and disponees, whom all failing, to the nearest heirs whomsoever of the said" A The daughter predeceased A without issue. *Held* that the destination thus failed, and that A took as heir-at-law to his daughter.

John Todd of Glenduffhill had a daughter Janet, who, on 29th June 1865, was married to James Mackenzie, the defender in this action. In the antenuptial contract of marriage John Todd "disponed and conveyed to himself, the said John Todd, in liferent for his liferent use allenarly, and to the said Janet Todd and the heirs of her body, or her assignees and disponees, whom all failing, to the nearest heirs whomsoever of the said John Todd, heritably and irredeemably, but expressly excluding the *jus mariti* and right of administration of her said intended husband, All and Whole his, the said John Todd's, lands of Glenduffhill." Mrs Janet Mackenzie died on 17th September 1872, survived by her husband and father, and without issue. On 3d October 1872, John Todd, on the assumption that by his daughter's death without issue the estate of Glenduffhill had reverted to him, subject to an eventual liferent in the defender James Mackenzie, granted an absolute disposition thereof in favour of himself in liferent, for his liferent use allenarly, and to his son-in-law, the said James Mackenzie, and his heirs and assignees whomsoever in fee. On 7th November 1872 John Todd expede a service to his daughter Mrs Janet Todd or Mackenzie, as his nearest and lawful heir in special in the said lands. The defender James Mackenzie completed his title by registering the disposition in his favour in the Register of Sasines on 4th October 1872, and by writ of confirmation by the Earl and Countess of Home, dated 26th November 1872.

John Todd died on 7th June 1873, and this action was brought by his nephew and heir-at-law, James Todd, who was also served nearest and lawful heir of provision to Mrs Janet Todd or Mackenzie. The object of the action was, in the first place, to have it declared that the service expede by James Todd on 7th November 1872 was inept; and, in the second place, for reduction of the disposition in favour of the defender James Mackenzie.

The pursuer averred that the estate of Glenduffhill was worth £90,000. A small portion of the estate was held upon a disposition from the North British Railway Company, who had acquired from John Todd, Mrs Mackenzie, and the defender, for their respective rights and interests, a portion of the lands of Glenduffhill, in consideration of which the Railway Company made a money payment, and also conveyed to them certain other pieces of land upon a destination precisely similar to that in the marriage-contract.