short of that. As Lord Deas has remarked, by far the larger number of instances that are given upon which criticisms and objections are made, particularly in articles 13, 14, 15, and 16 of this record, are really matters of opinion upon which we should have witnesses on each side differing in opinion according to the different views they might take, and involving really questions of very considerable delicacy and nicety in law. No doubt articles 11 and 12 are in a somewhat different position, but the instances there given are comparatively few. They are not such as to stamp the book with being a dishonest book. Out of a book of 590 pages, with 3500 designs, there have been selected comparatively few, and it is said that these are open to the objections there stated. I do not think, even assuming they were so, that that would raise a defence which would be relevant on this question, and I am therefore of opinion that the interlocutor of the Lord Ordinary is sound, and ought to be adhered to.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Complainers—Mackintosh—Pearson. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Respondents—J. P. B. Robertson—Dickson. Agents—Davidson & Syme, W.S.

Friday, March 16.

FIRST DIVISION.

[Lord Lee, Ordinary.

RITCHIE & SON *v.* BARTON.

Process—Jury Trial—Motion for New Trial—Slander—Evidence of Malice.

In an action of damages for slander, said to have been contained in certain letters written by the defenders, there was on record no allegation of malice on the part of the defender in writing the letters complained of. At the trial the presiding Judge held that the letters were privileged, and evidence of malice in writing them was led by the pursuer. The jury found for the pursuer. The defender having applied to have the verdict set aside on the ground that the case being one of privilege the pursuer should have averred malice on record, the Court *refused* to set aside the verdict.

Observed that the defender ought to have asked the presiding Judge to refuse to allow evidence of malice, and to direct the jury to find for him on the issue.

Damage.

Where, in an action of damages for slander, the jury assessed the damages at £300, and it was admitted that the pursuers, who were tradesmen, had not suffered in business through the slander—*held* that the damages were excessive, and that a new trial ought to be granted.

This was an action of damages which was raised by Robert Ritchie and James Ritchie, both blacksmiths in Edinburgh, against James Barton, S.S.C., concluding for payment of £300 to each of the pursuers for certain slanderous statements and charges which it was alleged the defender had made against the pursuers. The pursuers carried on business in partnership under the firm of Robert Ritchie & Son.

The pursuers on 6th December 1881 were asked by John Gavine, a builder in Edinburgh, to give an estimate for the supply of iron railings and gates for property in Eildon Street belonging to the defender Barton, and they accordingly sent in an offer "to provide and erect railing at Eildon Street same as already put up in Eildon Street. . . with gate and lock complete . . . the price to be paid one month after the job is finished." Gavine, who was acting on behalf of the defender, the proprietor of the villas, accepted the pursuers' offer, and they commenced the work forthwith, and on 6th February 1882 they rendered their account to Gavine as for a finished job. He refused payment, alleging that the work was not properly or sufficiently executed, and especially that the gates were not fitted with cranks enabling them to shut automatically, and that this must be put right before payment could be made.

On the 7th August 1882, after a delay of several months, the pursuer James Ritchie removed the gates, as he alleged, to enable him to fit on the cranks. The defender's brother George Barton interfered while Ritchie was in the act of removing the gates, and challenged his right to take them away, but in spite of what was said the pursuer removed the gates in a van, which he had brought with him for the purpose. The defender's brother deponed that Ritchie said he was taking the gates because they were not paid for. He admitted, however, that Ritchie had asked him "how the gates were to be altered without being taken to the shop." This he deponed he thought to be an afterthought, and did not mention to defender for several days afterwards. On the same evening the defender wrote to the pursuers in the following terms:—"Messrs Robert Ritchie & Son, Smiths. 47 *York Place, Edinburgh, 7th August* 1882.—Sirs,—My brother informs me that at 5 o'clock this afternoon you forcibly, and against his remonstrances, and without any right or authority from me, took off and carried away the two front gates of No. 15 and 16 Eildon Street, my property, and in my lawful possession, having paid for the same to the person with whom I contracted to finish the villas, and obtained delivery thereof. Your carrying off was a theftuous and illegal act; and unless the gates are restored by 10 o'clock to-morrow forenoon, in the same state and place as when removed, I will not only take criminal but also civil proceedings against you. I will also have new gates put up at your expense and risk.—I am, Sirs, your ob. servt., JAS. BARTON." The defender also on the same day lodged with the police authorities in Edinburgh information that the pursuers had been guilty of stealing the gates, in consequence of which two detectives visited the pursuers' premises in order to investigate the charge. After inquiry the police were satisfied that the charge was groundless.

On the following day the defender wrote to the pursuers in these terms:—"Messrs Robert Ritchie & Sons, Smiths. 47 *York Place, Edinburgh, 8th August* 1882.—Sirs,—Having failed to restore the gates at 15 and 16 Eildon Street, as required by letter to you of yesterday, I beg to intimate I have ordered new gates to be put up, at your expense and risk, and that on the account being rendered I will transmit it to you for payment,

with any loss or damage I may sustain through your illegal and theftuous carrying off of the gates; and failing payment I will at once raise the necessary proceedings in Court against you to enforce my rights.—Yrs. obedy., JAS. BARTON."

On the same day the pursuers addressed the following letter to the defender:—"*8th August* 1882.—Sir,—In reply to your letter of last night, I ordered the gates to be brought home to be altered according as advised, and they are now ready to be put on again; but until you send me an answer when you mean to pay them I cannot put them on again.—I am, yours, R. RITCHIE & SON."

On the following day the defender wrote to the pursuers in these terms:—"Messrs R. Ritchie & Sons, Smiths. 47 *York Place, Edinburgh, 9th August* 1882.—Sirs,—I have your note of this morning. The gates are my property, and were paid for and delivered to me months ago by my contractor. I never had anything to do with you regarding them, and you had neither right nor authority to remove them, and it is not true you took them away for the purpose you now pretend. So far as I am concerned, you simply stole them; and I shall hold you responsible for the new gates I have ordered, and all loss and damage I have sustained by your illegal and theftuous act, as intimated in my letters of 7th and 8th inst.—Yrs. obedy., JAS. BARTON"

The pursuers averred that the statements made in the above-quoted letters, whereby they were represented as having acted in a theftuous and illegal manner, and were charged with having stolen the gates in question, were false and slanderous. They also averred that the charge of theft preferred by the defender to the police was made maliciously and without probable cause.

They pleaded that the defender having given the information and made the charge and statements condescended on falsely and calumniously, was liable in damages, and that the sum sued for was in the circumstances reasonable.

The defender pleaded—"(4) The statements in the letters libelled having been made by the defender under the *bona fide* belief that they were warranted by the illegal acts and conduct of the pursuers' firm, and the defender having had probable cause for his complaint to the police against the said James Ritchie, and acted in the matter without malice, the present action cannot be maintained. (7) No loss or damage having been sustained by the pursuers through the writing of the foresaid letters, or the complaint to the police, the defender is entitled to absolvitor with expenses."

The following issues were adjusted for the trial of the cause:—

"*Issues for James Ritchie.*—1. Whether on or about the 7th, 8th, and 9th August 1882, the defender did write and transmit, or cause to be written and transmitted, to Messieurs Robert Ritchie & Son, blacksmiths, Broughton Market, Edinburgh, the letters, or any of them, . . . and whether the said letters, or any of them, are of and concerning the pursuer James Ritchie, and falsely and calumniously represent that he had committed a theftuous act, that he had theftuously carried off certain iron gates, alleged to belong to the defender, and had stolen said gates, to the loss, injury, and damage of the pursuer James Ritchie? 2. Whether, on or about the 7th August 1882, the defender falsely, maliciously, and without probable cause, lodged or caused to be lodged with the police authorities, Edinburgh, information to the effect that the pursuer James Ritchie had been guilty of stealing said iron gates, the alleged property of the defender, to the loss, injury, and damage of the pursuer James Ritchie?"

"*Issues for Robert Ritchie.*—3. Whether, on or about the 7th, 8th, and 9th August 1882, the defender did write, or cause to be written and transmitted, to Messieurs Robert Ritchie & Son, blacksmiths, Broughton Market, Edinburgh, the letters, or any of them, . . . and whether the said letters, or any of them, are of and concerning the pursuer Robert Ritchie, and falsely and calumniously represent that he had committed a theftuous act, that he had theftuously carried off certain iron gates alleged to belong to the defender, and had stolen said gates, to the loss, injury, and damage of the pursuer Robert Ritchie? 4. Whether, on or about the 7th August 1882, the defender falsely, maliciously, and without probable cause, lodged or caused to be lodged with the police authorities, Edinburgh, information to the effect that the pursuer Robert Ritchie had been guilty of stealing said iron gates, the alleged property of the defender, to the loss, injury, and damage of the pursuer Robert Ritchie?"

On the evidence, the result of which is shortly narrated above, and is fully referred to in the opinion of the Lord President, the jury found for the pursuer James Ritchie under the 1st and 2d issues, and assessed the damages to him at £200; they also found for the pursuer Robert Ritchie under the 3d issue, and assessed the damages to him at £100. Under the 4th issue they found for the defender.

In the course of the evidence the Lord Ordinary ruled that the letters containing the expressions complained of were privileged. Evidence was led to show that the pursuer had acted maliciously. The defender did not ask the Judge to rule that no malice being averred the verdict must be for him on the issue relating to the letters.

The pursuers admitted in their evidence that they had not suffered in their business through the statements made.

The defender obtained a rule on the pursuers to show cause why a new trial should not be granted. The motion was supported upon three grounds—(1) That the presiding Judge had ruled that the letters complained of were privileged, and no malice in writing them having been alleged on record, the verdict must be set aside; (2) that there was no evidence of malice; and (3) that the damages awarded were excessive.

The pursuers, in showing cause, argued—The expressions used by the defender in his letters to the pursuers were slanderous, and were made without probable cause; it was proved that the defender knew the object for which the gates were being removed, and that his action in making a criminal charge to the police authorities was malicious, and calculated seriously to injure the pursuers' good name and business.

Authorities—*Ogilvie* v. *Scott*, March 19, 1836, 14 S. 729; *Walker* v. *Cumming*, February 1, 1868, 6 Macph. 318.

Argued for defender in support of the rule—There was no averment of malice upon the record, and pursuers were not entitled to try to prove it. The words used in the letters founded

on were meant to characterise an act, and not to be slanderous of the persons to whom the letters were addressed. If this was a case of privilege, then privilege was not so much exceeded as to amount to malice. In any case, however, the damages were so excessive as to warrant a new trial.

Authority—*M'Bride* v. *Williams and Dalzell*, January 28, 1869, 7 Macph. 427.

At advising—

LORD PRESIDENT—It appears that there were four issues sent to the jury, two for James Ritchie the son, and two for Robert Ritchie the father, who were in partnership together, and carried on a blacksmith's business in Edinburgh under the firm of Robert Ritchie & Son. As regards the second of the two issues for Robert Ritchie, which is in these terms:—"4. Whether, on or about the 7th August 1882, the defender, falsely, maliciously, and without probable cause, lodged or caused to be lodged with the police authorities, Edinburgh, information to the effect that the pursuer Robert Ritchie had been guilty of stealing said iron gates, the alleged property of the defender, to the loss, injury, and damage of the pursuer Robert Ritchie"—as the jury found on it for the defender Barton, we may throw it out of account in the present question. There is thus a verdict for the father Robert Ritchie upon the ground that he was the victim of certain slanderous statements contained in letters written by the defender to the firm of Robert Ritchie & Son, and there is also a verdict for James Ritchie, the son, to the same effect. Now, plainly the question of privilege arises very clearly with reference to the verdict upon the first issue for James and the only one for Robert. The question is an entirely different one from the question under the second issue for James Ritchie, which has reference to the action which the defender took in lodging information with the police authorities. That was a case of privilege, and without averring malice and want of probable cause the pursuers would not have been allowed to go to trial. But so far as the record discloses, the letters do not appear to have been privileged. The defender does not seem to have occupied any position of privilege in writing them. It appears, however, that at the trial the Lord Ordinary ruled that the letters containing the slander were privileged, and no exception seems to have been taken to that ruling. The case must be taken therefore on the footing that as regards both the issues the defender was privileged. That being the state of the case as it comes before us, we are asked to grant a new trial upon three grounds—First, that as this is to be considered a case of privilege, and as no averment of malice has been made upon the record, the pursuers are not entitled to recover damages. This is no doubt at first sight a somewhat formidable proposition, but then it must be kept in mind that the presiding Judge was not asked to act upon that view of the case at all. If the defender had wished to maintain the proposition that because there was no averment of malice on record, therefore the pursuer was not to be entitled to prove malice, the correct course would have been for him to have asked the presiding judge to direct the jury to find for him on the letters, and if that had not been done, to have taken exception to the direction which was given; this course, however, was not followed by the defender. He did not ask the presiding Judge for that direction. If he had so asked, and if the exception had been taken, the question would have been fairly raised, but as it is, the presiding Judge allowed the pursuer to go on to prove malice, and the jury to deal with the question as a privileged case, and to consider whether malice was proved. As this has been done, it is impossible that we can entertain the question now. The second ground upon which we are asked to grant a new trial is that there is not sufficient evidence to warrant the jury in holding that malice had been proved on the part of the defender. Now, this is a somewhat narrow question, requiring an examination of the evidence. There can be no doubt that, for whatever cause, the Ritchies had delayed for a considerable time doing anything to put the gates, which were undoubtedly defective, into proper working order, and accordingly when James Ritchie went to the house on the 7th August he perhaps did not know very well what might be required to be done. In his examination he says—"I went down to Eildon Street on 7th August, shortly before five o'clock with the boy Sinclair and a van. I removed the gates. I saw Mr Barton's brother. He challenged me. I told him I was going to take them home and alter them, and see if I could get my money for them." And this account of what occurred is corroborated by the evidence of the defender's brother, who says in cross-examination—"I heard Ritchie on the 7th August say, How do you think that the gates are to be altered without being taken to the shop. I did not tell my brother, for I thought it was nonsense. I told him I thought it was an afterthought. I told my brother afterwards, three or four days afterwards." Now, I think we may take it from these passages that the reason for removing the gates was that given to the defender's brother, namely, to put them into working order. But the question naturally arises, Did George Barton not tell his brother until three or four days afterwards the reason which James Ritchie had given for removing the gates? If he did not, it is certainly a very curious circumstance. The defender, when he discovered that the gates had been removed, was naturally astonished, and it is somewhat extraordinary that his brother did not mention to him the reason which had been assigned for their removal, for, if true, no explanation could be more satisfactory. I think the jury were entitled to judge of the probabilities of the case, and as to whether it was not more likely that the reason assigned for the removal of the gates was communicated by George Barton to the defender, and they were also entitled to infer, I think, that the account now given by the defender and his brother of what actually took place is not accurate.

Then we have the letter of the 7th August, which was written immediately after the gates were taken away. Now, no doubt this letter was written hastily and without due consideration, for the expressions made use of in it are quite unjustifiable. The words founded on by the pursuers are these— . . . "Your carrying off was a theftuous and illegal act; and unless the gates are restored by 10 o'clock to-morrow forenoon, in the same state and place as when removed, I will not only take criminal but also civil proceed-

ings against you. I will also have new gates put up at your expense and risk." Mr Smith attempted to show that the words here used were not intended to apply to the pursuers, but were meant rather to characterise the action, but it appears to me that that interpretation cannot be made to coincide with the words which follow.

It is further to be observed that the writer of this letter gives a certain indulgence to the supposed thief, for he allows him until the next day at 10 o'clock to restore the gates. Now, I think he was bound not to depart from the time which he had thus allowed for the restoration of the gates. Yet what does he do? In the language of the witness Douglas—a sergeant of police—he says—"In August last I was at James Street Office. Mr Barton came on the 7th about a quarter to six. He wanted a constable to get Mr Ritchie apprehended for forcibly taking away a gate. He said he stole the gate. I advised him to apply to the detective." . . . Now this was done at a quarter to six upon the same evening, and it shows what a curious state of mind the defender was in, for he had by the terms of his letter, written shortly before, pledged himself to take no proceedings until the following day. But the matter does not rest there, for we have the letter of the 8th August written by the defender to the pursuers, and it is in these terms:—"Sirs,—Having failed to restore the gates at 15 and 16 Eildon Street, as required by letter to you of yesterday, I beg to intimate I have ordered new gates to be put up, at your expense and risk, and that on the account being rendered I will transmit it to you for payment, with any loss or damage I may sustain through your illegal and theftuous carrying off of the gates; and failing payment, I will at once raise the necessary proceedings in Court against you to enforce my rights.—Yrs. obedy., JAMES BARTON." Here the defender seems to delight in the repetition of the offensive epithet Then follows the letter by Ritchie & Son, which is in these terms:—"*8th August* 1882.—Sir,—In reply to your letter of last night, I ordered the gates to be brought home to be altered according as advised, and they are now ready to be put on again; but until you send me an answer when you mean to pay them I cannot put them on again. —I am, yours, R. RITCHIE & SON." Now, there is here a clear intimation of the purpose for which the gates had been removed, so that even if the defender had not been previously made aware of that purpose he is informed of it now. This letter was acknowledged by the defender on the 9th August in the following terms:—"Sirs,—I have your note of this morning. The gates are my property, and were paid for and delivered to me months ago by my contractor. I never had anything to do with you regarding them, and you had neither right nor authority to remove them, and it is not true you took them away for the purpose you now pretend. So far as I am concerned, you simply stole them; and I shall hold you responsible for the new gates I have ordered, and all loss and damage I have sustained by your illegal and theftuous act, as intimated in my letters of 7th and 8th inst.—Yrs. obedy., JAMES BARTON." This continuous repetition of the same slanderous expressions, with the alleged *animus furandi*, seems to me to imply a great deal, especially when we take into account the action which the defender took in the matter immediately after writing the letter of the 7th of August, and also the repetition of the slanderous expressions after the pursuers' letter of explanation of the 8th August. I think the jury were quite entitled to take into consideration whether or not there was malice, and I am therefore quite clear that the verdict should not be disturbed upon that ground.

The third ground upon which a new trial is asked is excess of damages. I think that is well founded. The pursuers frankly admit that they have not suffered in any way in their business from what has occurred, and that being so, the sum awarded by the jury is in name of *solatium*. Now £200 and £100 are clearly too much in the circumstances, and therefore I am for granting a new trial on that ground. If, however, the pursuers are willing to reduce the amount claimed to such a sum as the Court directs, this may save a new trial; and the sum which I should propose to your Lordships that we should allow is £40 to the son and £25 to the father.

LORD DEAS—Having heard what your Lordship has said upon this case, I fully concur.

The only nice question raised is, Whether or not there is enough to prove malice against the defender? and on that question I desire to read a passage from my own opinion in the case of *Watson* v. *Burnet*, Feb. 8, 1862, 24 D. 494—. . . "When the words are spoken on an occasion when it is the duty or the right of the defender to speak upon the subject—when the occasion is one on which it is justifiable and proper for him to enter upon that subject—there arises an antagonistic presumption that the defender was not actuated by malice or improper motives equivalent to malice, and consequently the pursuer must allege and prove actual malice, or such grossness, impropriety, or excess as the law will hold equivalent to malice." I think that last expression is rather loose, and I wish to explain and correct what I then said. In place of saying "as the law will hold equivalent to malice," I think the words should be "as the law will hold sufficient to infer malice"—just as in another Court malice is inferred from the nature of the act done, so here it is inferred from the nature of the words spoken.

LORD MURE—The case seems to be reduced to two points—first, as to whether or not there is sufficient evidence to make the writing of this letter malicious on the part of the defender, and second, whether the jury have awarded excessive damages. On the first of these points I concur with your Lordship in thinking that this is entirely a jury question, and also that the jury were entitled to infer that a party had acted maliciously from the actions and letters which form the subject of the issues in this case, for we have, first, the letter charging the pursuers with theft, and this is followed up on the same day by the defender's action in going to the public office and lodging a criminal complaint, although he had promised not to take proceedings until the day following; then after the pursuers' explanatory letter we have the charge repeated, and the jury decided that this was malicious. I agree with your Lordship in thinking that we should not interfere with the decision of the jury. On the question of excess of damages I concur in

thinking that the sums awarded by the jury are excessive, and that a new trial ought to be allowed unless the pursuers consent to modify their claim to the amount indicated by your Lordship.

Lord Shand—If this case had rested upon the letters alone, I should have had considerable difficulty in sustaining the verdict, for I think it might fairly enough have been said that the term "theftuous" was not used calumniously, but was intended to be a strong expression made use of by the defender for what he considered the pursuers' improper interference with his property. But not only is the charge repeated, but we have also the circumstances which accompanied it, namely, the defender going to the Police Office, and his preferring a charge against the pursuers. I think that the jury were entitled to find that the language used was calumnious. If that is so, then the question comes to be, Is malice proved? Now, I agree with your Lordships in thinking that the case, though a narrow one, has sufficient in it for the consideration of a jury, and the jury having considered the matter, I agree with your Lordships in thinking that their verdict ought not to be disturbed.

On the question of damages there can be no doubt that far too large an award has been made, and I think that the parties would do well to agree to the suggestions of the Court upon this point, and so avoid the expense of a new trial.

Lord Lee—I agree in the result at which your Lordships have arrived. I had some difficulty in coming to the conclusion as to the sufficiency of the proof of malice, and as to whether there was here such recklessness of consequences as to entitle the jury to infer malice. Upon the whole matter I am inclined to think that there was. The fact that the letter of 9th August which your Lordship has referred to was written by the defender after the explanation offered by the pursuers as to the cause of the removal of the gates is of great importance. The defender should have inquired as to the purpose of removing the gates before he used the expressions complained of, and if he made no inquiry on the subject before charging the pursuers with theft, that, I think, was negligence of such a kind as to warrant the jury in inferring malice.

The pursuers put in a minute restricting the damages to the amount suggested by the Court.

The Court refused the motion for a new trial, and pronounced the following interlocutors:—

(1) On the rule — "The Lords having heard counsel for the parties, in respect the counsel for the pursuers have agreed to restrict the amount obtained by the verdict of the jury to £40 for the pursuer James Ritchie and £25 for the pursuer Robert Ritchie, discharge the rule formerly granted, and refuse to grant a new trial: Find no expenses due to either party in discussing the rule."

(2) On the motion to apply the verdict—"The Lords of consent apply the verdict found by the jury, and decern against the defenders (1st) for payment of the sum of £40 to the pursuer James Ritchie, and (2d) for the payment of the sum of £25 to the pursuer Robert Ritchie: Find the defender liable in expenses."

Counsel for Pursuer—Young—Ure. Agents—Nisbet & Mathison, S.S.C.

Counsel for Defenders—Campbell Smith—Strachan. Agent—Party.

Friday, March 16.

FIRST DIVISION.

BUCHANAN, PETITIONER.

Entail—Disentail—Date of Entail—Statute 11 *and* 12 *Vict. c.* 36 (*Entail Amendment Act* 1848), *sec.* 28.

Trustees acting under the powers of a private Act of Parliament obtained in 1866, sold the lands of A, which were held under an entail dated 1784, and with the proceeds purchased the estate of T., and entailed it on the same series of heirs. In a petition for authority to record an instrument of disentail, presented by the heir of entail in possession of the estate of T.—*held*, under sec. 28 of the Entail Amendment Act 1848, that 16th July 1866, the date of the private Act of Parliament, was the date of the existing deed of entail of the lands of T.

The Entail Amendment Act 1848, section 28, provides— "For the purposes of this Act the date at which the Act of Parliament, deed, or writing placing money or other property under trust, or directing lands to be entailed, came into operation, shall be held to be the date at which the lands should have been entailed in terms of the trust, and it shall also be held to be the date of any entail to be made hereafter in execution of the trust, whatever be the actual date of such entail."

By a private Act of Parliament, known as "Buchanan's Estate Act 1866," the late Major Herbert Buchanan, heir of entail in possession of the estate of Arden, in the county of Dumbarton, under a deed of entail granted by George Buchanan of Arden, dated and recorded in 1784, was authorised to sell that entailed estate, and to invest the proceeds in the purchase of land in Scotland to be entailed. Certain trustees were appointed by the Act, in whom the lands of Arden, free from the conditions, limitations, and clauses, irritant and resolutive, of the entail, together with certain unentailed lands, were vested, and who, in pursuance of its provisions, conveyed to different purchasers certain portions of the lands, and consigned the price, amounting to £49,000, in the Commercial Bank of Scotland. Of this sum £42,000 was subsequently applied by them in the purchase of the lands of Throsk and Popiltrees, in the county of Stirling, and a further sum of £1047 was expended in improvements on these lands. The balance, amounting to about £4507, was at the date of this petition deposited in the said bank at their branch at Dumbarton. A deed of entail was thereafter, in pursuance of the Act, executed by the trustees, in which the heirs of entail called to the succession of the lands of Throsk and Popiltrees were the same as those called to the succession of the estate of Arden by the disposition and tailzie of that estate. This deed was dated and recorded in 1869.