

drawn in the manner described, the Duke cannot procure a sufficient supply of water for the service of his mill, because these operations, in their nature, obstruct the flow of water for that purpose. And as there were strong grounds for believing that the servitude had its origin in conferring a benefit on the Caverton mill, this mill having been erected long prior to the appellant's, and the aqueduct then in existence, flowing through Nisbet's and the appellant's lands, and serving his mill, every presumption is in favour of the right of servitude, and also to a sufficient flow of water, with right to repair and cleanse the caulds and aqueducts.

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HAMILTON.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors complained of be, and the same are hereby affirmed; and it is further ordered, that the appellant do pay to the respondents £100 costs.

For Appellant, *C. Yorke, Al. Wedderburn.*

For Respondents, *R. Makcintosh, Alexander Wight.*

*Note.*—Not reported in Court of Session Reports.

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MRS. EUPHAM HAMILTON, Widow of CHARLES HAMILTON, Esq., and BETHIA and CHARLOTTE HAMILTON, their Daughters,	}	<i>Appellants;</i>
ARCHIBALD HAMILTON, Esq. of Rosehall		

House of Lords, 5th April 1767.

HEIR AND EXECUTOR—APPARENCY—RENTS.—Held, reversing the judgment of the Court of Session, that the executors, and not the heir of a party who died in possession of an estate on apparency, was entitled to the arrears of rents unuplifted at her death.

The heir to the estate of Rosehall died in apparency, after possession of the estate for some years. She had left arrears of rent in the hands of the tenants, unuplifted by her at the time of her death. In a competition between the heir to the estate and her executors, it was objected to by the heir, that these arrears of rents did not pass to her executors, as she had died uninfest and in apparency, while the estate

1768. remained in *hereditate jacente* of her predecessor, to whom she had made up a title. He was therefore entitled to succeed to the estate, as well as to the arrears of rents unuplifted in the tenant's hands, as an accessory part of the estate. To this, it was answered, that Miss Hamilton's apparen-  
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 SKENE, &c. cency arose from the respondent disputing her right to succeed to the estates, which she was found entitled to. That, besides, an heir apparent was entitled, before infertment, to the rents and profits of the estate, upon which she has entered into possession.

Jan. 14, 1761. The Court of Session preferred the heir. Against this judgment an appeal was brought. After hearing counsel, it was Ordered and adjudged that the interlocutors complained of be reversed ; and it is hereby declared and adjudged, that Mrs. Eupham Hamilton, the executrix of Miss Hamilton, the last apparent heir, is preferable to Mr. Archibald Hamilton the heir, to the rents falling due during the apparen-  
 cency, and remaining unuplifted ; and it is hereby further ordered, that the cause be remitted to the Court of Session in Scotland, to proceed therein accordingly.

For the Appellant, *Ja. Montgomery, C. Yorke.*  
 For the Respondent, *H. Dundas, F. Norton.*

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ALEXANDER LYALL, Younger of Garden, *Appellant ;*  
 GEORGE SKENE and WILLIAM MILNE, *Respondents.*

House of Lords, *9th Feb. 1768.*

UNION—DISPENSING CLAUSE—INFERTMENT.—Objections were stated to a sasine, on the ground that it was not taken on the several tenements of lands—these, although originally united by a clause of union, being now discontinuous, and the union dissolved by a sale of part: Held, in the House of Lords, that the usage of granting dispensation clauses, allowing sasine to be taken on a part for the whole, was material, if established in this case, but appeal dismissed, in consequence of no evidence of the usage being adduced.

The appellant was enrolled as a freeholder in the county of Forfar, in virtue of a Crown charter of the lands of Petairlie, Guildie, and others, granted to Lord Panmure, and