respondent's grandfather, was in no shape an heir of entail, under the deed 1697, fettered by the prohibitory, irritant, and resolutive clauses therein contained, but disponee, or institute, against whom these clauses neither were directed, nor could by implication be extended. 2. That as such disponee or institute, he had full power to have defeated the entail 1697 *in toto*, much more was he enabled to execute the supplementary entail now in question, agreeing in all respects with the original entail, and only adding to the substitutions thereof a certain series of heirs to succeed when the former should be exhausted.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be, and the same are hereby affirmed.

For the Appellants, *Wm. Adam, John Clerk.*

For the Respondents, *Sir Sam. Romilly, Jas. Abercromby.*

NOTE.—Unreported in the Court of Session.

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[Fac. Coll. vol. xiii. p. 339.]

JOHN KIRKPATRICK, Esq., Advocate, Residuary Legatee of JOHN SIME, Ship-builder in Leith, deceased, and MRS. ISABELLA KIRKPATRICK, Mother of the said John Kirkpatrick, . . . . } *Appellants;*

MARGARET SIME, Sister consanguinean of the said John Sime, deceased, and only surviving child of the deceased John Sime, Senior, Ship-builder in Leith, } *Respondent.*

House of Lords, 22d July 1811.

LEGITIM—HOMOLOGATION—HERITABLE OR MOVEABLE—PARTNERSHIP.—(1.) A father, in his settlement, left all his heritable and moveable property to his son, who was in partnership with him as a ship-builder. This settlement was burdened with an annuity of £50 to his only daughter. The daughter never received her annuity; but for twenty-one years resided with her brother in family. After her brother's death, and twenty-one years after the death of her father, she claimed her legitim as due at his death. Held her entitled to it, and that she had not homologated or approved of the deceased's settlement.

(2.) In computing the legitim: Held that certain heritable subjects, though vested in the father's name, as an individual, belonged to

1811.

KIRKPATRICK, &c. *v.* SIME.

the partnership, and as such were to be held as moveable estate, as in a question of succession, and therefore subject to her legitim. In the House of Lords, this last point remitted for consideration, with doubts expressed.

After the respondent's father, the deceased John Sime, senior, shipbuilder in Leith, died, her brother, who had been in partnership with him in business, intromitted and possessed himself of his whole real and personal estate; and the present claim was an action raised by the respondent against the appellant, the trust-disponee of her brother, who shortly thereafter also died, claiming, 1st, Her legitim out of her father's estate. 2. A share in certain heritable subjects held by the copartnership, in which her father and brother were sole partners.

It appeared that the respondent was the child of the first marriage of John Sime, senior, and John Sime, junior, a child of his second marriage. That some time before the

1749. father's death he had executed a settlement of certain heritable subjects acquired by him, in the following terms: "in "favour of himself and Margaret Hog, his spouse, in con- "junct fee and liferent, for the said Margaret Hog her life- "rent use allenarly, and to the said John Sime, junior, their "only son, his heirs and assignees whatsoever, heritably "and irredeemably," &c., with reservation, however, of full powers of property in the subjects in favour of himself.

11 July and Sept. 1749. Upon this disposition infeftment passed.

About the same period Mr. Sime acquired five other subjects in North Leith, and, by disposition and sasine, of these

Mar. 25, and April 15, 1749; April 15 and 20, 1749. dates, these subjects were conveyed by the vendors in the same terms as above mentioned, and the titles to these completed by charter and infeftment.

At an early period, many years before his death, he had constructed, upon a part of the ground so held, a dry dock, and other accommodations connected with it, in which he carried on his trade of a ship builder.

April 19, 1776. Of this date, he executed a testamentary deed of general disposition and assignation, by which he "gave, granted, "assigned, and disponed to and in favour of the said John "Sime, my son, his heirs and executors, or assignees, not "only all and sundry lands and tenements, houses, annual- "rents, *dry docks*, tacks, or other *heritable* subjects what- "soever, presently pertaining and belonging to me, or which "shall pertain and belong to me at the time of my decease, "but also all and sundry goods, gear, debts, sums of money

" &c., or *other moveable* subjects whatever," under burden of a liferent annuity to Janet Lawson, his third wife, provided by contract of marriage, " *as also an annuity or life-rent of* £50 *to Margaret Sime, my daughter, during her life,*" &c.

Mr. Sime survived the execution of this deed about nine months, and died in January 1777. He left issue John Sime, junior, and the respondent. It has been already seen that John Sime had, for many years before his father's death, been assumed as a partner, and that they carried on a joint trade as ship-builders, under the firm of " John Sime & Son."

Under the settlements above mentioned, John Sime, jun., paid regularly the annuity to the deceased's widow; but with reference to the respondent, it was alleged, that she lived with him in family, and in this way received her board in lieu of her annuity, with whatever sums and necessaries she had occasion for or demanded.

Matters continued in this situation until 1796, when John Sime, junior, died.

In March 1789 he executed two deeds, by which he conveyed, after his death, all his estate, real or personal, to certain trustees, for the following purposes: 1. For paying his debts. 2. For paying a legacy of one thousand guineas to each of his two natural children. 3. For paying an annuity to the appellant Mrs. Isobel Irving, wife of William Kirkpatrick, Esq.; and, 4. Of conveying to his son, the other appellant, John Kirkpatrick, when he should become of age, the residue of his estate.

Upon the death of Mr. Sime, junior, the only surviving trustees who accepted were James Balfour, W. S., and John M'Laren of Leith, and they entered on the management of the trust.

In June 1797 the present action was raised by the respondent against the surviving trustee and the appellant, concluding, first, for her annuity since her father's death, under deduction of £25 per annum for maintenance; but this action was afterwards abandoned, or changed for a claim of £5000, or whatever other sum should be found to be due to her as heir, executrix, or nearest of kin, or as only surviving child of her father's first marriage.

The Lord Ordinary ordered her, by interlocutor, " to give " a special condescendence of what she claims from the " defender, as trustee of the late Mr. John Sime, either as

1811.

KIRKPATRICK, &c. *v.* SIME.

" bygone annuities, in virtue of the settlement of her father; " or as her share of the effects that might have belonged to " Margaret Gordon, her mother, or for her legitim out of " her father's effects.

The respondent, accordingly, gave in a condescendence, claiming as legitim, one half of the whole amount contained in the inventory of the personal estate given up by the son after her father's death in 1776.

The Court, on report of Lord Polkemmet, pronounced
May 28, 1800. this interlocutor: " The Lords find the pursuer entitled to " her legitim; but remit to the Lord Ordinary to hear the " counsel for the parties on the amount thereof, and the " other particulars in the cause, and to do as he shall see " just."

This having been decided, a discussion then took place as to its extent.

The parties stated the case in memorials, and the Lord
Nov. 12, 1801. Ordinary pronounced this interlocutor, " Finds that a co- " partnery in the trade of ship-building subsisted between " the father and son, John Sime, senior and junior, for a " number of years: Finds it instructed by the inventories " made up at four different periods, that the whole proper- " ty, both heritable and moveable, contained in said inven- " tories, fell under this copartnery, and was understood be- " tween the father and the son to be their joint pro-indiviso " property, in equal shares, both as to stock and profits: " Finds that the assumption of the son into this copartnery, " whereby the father, in his lifetime, had bestowed on him " one half, or nearly so, of his whole substance, is to be held " as a virtual and effectual forisfamiliation of the son, so as " to exclude him from any after claim of legitim at his " father's death: Finds that by the father's death the co- " partnery was dissolved, and that there then fell to be an " equal division of the property thereof, one half of which " belonged to John Sime, junior, *proprio jure*, and the other " half fell to be taken up by the father's representatives: " Finds that the plea of the pursuer that the father's inte- " rest in the whole copartnery, subjects, and effects, is to " be held as moveable or personal right, falling under his " executry (though applicable to the case of a copartnery, " or trading or manufacturing company, so constituted as " not to be dissolved by the death or bankruptcy of one " partner, and where the share of the deceasing, or bank- " rupt partner, is to be drawn out, according to a certain

" valuation), does not, however, apply to this case, where " the father's death effected a total and absolute dissolution of " the copartnery; so that his share of the property thereof did " thereby become descendible to his representatives, accord- " ing to the general rule of law as to heritable or moveable " succession: Finds that such part of the father's half of " the copartnery property as was heritable fell to John " Sime, junior, as disponee by the father's settlement in his " favour: Finds as to the father's moveables, that the half, " or dead's part, fell likewise to John Sime, junior, in virtue " of said settlement: Finds that the other half, as legitim, " fell wholly to the pursuer, her father's only remaining " child *in familia*, in consequence of the son's forisfamilia- " tion aforesaid: Finds the pursuer entitled to said legitim, " with interest thereof from her father's death: And finds, " that the long lapse of time which intervened between the " opening of the pursuer's claim, and its being first insisted " on, affords the defenders no plea of favour for a restriction " of the interest or otherwise, in respect there is no appear- " ance that John Sime, junior, did ever communicate to his " sister, the pursuer, the contents of their father's settle- " ment, or ever applied for acceptance of the annuity in " place of her right of legitim. As to other matters of con- " troversy between the parties, renews the remit to the ac- " countant in the interlocutor of the 12th Nov. 1799; the " report to contain a state of the amount of the pursuer's " legitim, upon the principle of this interlocutor."

Both parties having represented, the Lord Ordinary represented the cause to the Court, who pronounced this interlocutor:—" The Lords find that there was a subsisting " partnership between John Sime and son, in consequence " whereof, John Sime, junior, had right, *proprio jure*, to one " half of the partnership funds: Find that the dock and perti- " nents thereof, which were used in the business of the " partnership, must be held as sunk in the company's estate, " and moveable as to every question of succession: Find " that the son's claim of legitim remained entire, in respect " the same has never been discharged, without prejudice to " any claim of collation, at the instance of his sister Marga- " ret, who is also entitled to her claim of legitim, with inte- " rest from the time of her father's death; but subject to a " reasonable deduction for board, clothing, and other articles " furnished to her while she lived in family with her bro- " ther, and remit to the Lord Ordinary to proceed accord- " ingly, and particularly to hear parties with respect to the

Nov. 17 and 22, 1803.

1811.

KIRKPATRICK, &c. *v.* SIME.

"tenement of houses which was not used in the business of "the copartnery, though entered in the inventories referred "to, and likewise with respect to the share in the Ropery "Company, whether these subjects fall under division or "not, and in what manner, and do as he shall see cause."

March 1 and 2, 1804. A petition by the trustee against this interlocutor was refused.

The cause having gone back to the Lord Ordinary, he ordered an interim payment to the respondent of £500.

The appellant, John Kirkpatrick, arrived at majority on the 23d Nov. 1806, and Mr. Balfour, the trustee, died on the 24th of the same month.

And then the appellants brought the present appeal to the House of Lords against the above interlocutors.

*Pleaded for the Appellants.*—1. Legitim is that share of the moveable effects of a father, which, at his death, belongs to his children *proprio jure*, and which he cannot dispose of by will. This right may be discharged with the marriage settlement of the parents, or it may be renounced by the children in the father's lifetime; or, if the father makes a general settlement of his moveable estate, by which he disposes of the subject of the legitim as well as the rest, and in lieu of the legal claim of his children, settles special provisions upon them, they may, by acceptance of the provisions given, approve of the settlement, or by other acts of *homologation*, render it effectual, and bar them from claiming the legitim.

In the present case, the right of legitim was effectually excluded by a long course of acts of homologation of her father's general settlement, which bestowed on her a separate and reasonable provision. The general doctrine here stated is completely fixed in the law of Scotland, and it is therefore superfluous to cite authorities in support of it. Both Stair and Erskine declare that this claim is effectually barred by their acceptance, homologation, or approving of their father's settlement, whereby a lawful contract is established between the father, or those deriving right from him, and the children having right to legitim, which is effectual against them. The law standing thus, it is to be considered, Whether the respondent, Margaret Sime, did homologate her father's settlement, and is therefore barred from claiming legitim. The appellants have not been able to discover whether there was any contract of marriage in which the legitim was discharged, or whether the respondent herself had discharged that legitim; but as the pre-

Stair, B. iv. tit. 40. § 29; Ersk. B. iii. tit. 3. § 47.

sent claim of legitim was not brought by the respondent till twenty-one years after the death of her father, and when she was approaching to the age of seventy, it could not be expected, even if such a discharge existed, that it should have been preserved or recovered by the appellants. The claim was not brought until after the death of John Sime, junior, to whom alone the facts could be accurately known, and, in the mean time, the whole books and papers of Mr. Sime, junior, had been in the hands of various persons, amongst others, the agents and friends of the respondent.

But it is submitted that the facts in evidence, or admitted, import in law a renunciation of the right of legitim, and an homologation of the general disposition of John Sime, senior, with the burden of an annuity to the respondent. John Simē died in January 1777. His deed of settlement was recorded in the books of the Court of Session, a few weeks afterwards. This was for the purpose of publishing, as well as preserving it for the use of all concerned. Mr. Sime's *third* wife, whose annuity was confirmed by that settlement, lived in family with John Sime, junior, and Margaret Sime, the respondent. It is impossible to doubt, therefore, that the nature and contents of the deed must have been distinctly known to them all. It cannot be supposed, as the respondent has alleged, that she was ignorant, during all her brother's life, of the nature of her father's settlement. That supposition is inconsistent with the idea of her being possessed of any degree of understanding. If, therefore, she knew of the settlement, (and of this there can be no doubt), she must be held as having acquiesced in it. Her total silence during her brother's life, after the death of her father, for a period of twenty-one years, can admit of no other construction.

But the respondent's knowledge of the settlement is not left to probability, because it is proved and established by the summons, which sought payment of it, under deduction of £25. The respondent being in the knowledge of this fact, continued to live in the house of her brother from her father's death in 1777 till the brother's death in 1796, a period of nearly twenty years. During all that time she received maintenance, money, and clothes, and every thing she required. It must be held, therefore, by these acts, and by long silence, she had acquiesced in and approved of the settlement of her father. A claim, therefore, of legitim, so long after the father's death, and even after the death of his universal disponee, is one that has been scarcely ever

1811.

KIRKPATRICK, &c. *v.* SIME.

heard of before. But, 2. Legitim is due only out of the moveable estate of the deceased, and, supposing she were held entitled to legitim, the dry-dock, and other subjects described as pertinents thereof, conveyed to John Sime, junior, by the general disposition of his father, were not part of the *moveable* estate of John Sime, senior, but constituted a real and heritable estate in his person. It cannot be disputed, in point of fact, that at the date of the general disposition of John Sime, senior, in 1776, and also at his death in 1777, the dry-dock and pertinents, with various other subjects, stood feudally vested in the person of John Sime, junior, his heirs and assignees whatsoever, under reserved powers to the father.

But it is clear that the effect of an investiture in these terms is, that the husband and father is sole fiar, and neither will any attempt be made to deny this proposition. It seems therefore to follow, in the simplest manner possible, from the undeniable state of the law, and the undeniable state of fact, that the subjects in question, *being an heritable* estate in the person of John Sime, senior, at his death, could not be liable to any claim of *legitim.* But though none of the points here stated can be disputed, it is maintained that the dock and pertinents had been made part of the stock in trade of the company, of which John Sime, senior, and John Sime, junior, were partners; and that, in point of law, though the subjects constituting the stock in trade of the company, may be in their nature heritable, the shares of a partner in that stock is moveable and personal property. But there is no evidence to show, that it was the intention of father and son, that the dock, and any of the heritable subjects vested in the former as an individual, should, in any sense, become a part of the stock of the company, to the effect of giving them, or their executors, an interest in these subjects. 3. Besides, there is no solid principle on which a real or heritable estate, vested in a copartnership, can be held to be moveable or personal estate in the individual partners, to the effect of their interest therein being transmitted to their personal representatives. The rule is quite different in England, for there each individual partner's share continues to be real estate in him; so they maintain that though opinions to the contrary may have been entertained in Scotland, yet no judgment of the House of Lords has ever countenanced those opinions.

*Pleaded for the Respondent.*—1. In regard to the legi-

tim, it appears to be quite clear and settled in many cases, both in the Court of Session and House of Lords, that no voluntary instrument executed by the father *mortis causa*, can disappoint a child of legitim. The legitim belongs to the children by law, not to the father, and he can never dispose of it by any deed which is to have effect only at death. Therefore, the general disposition and assignation executed by John Sime, the father, had not the effect to cut off the respondent's right of legitim. This is now so well known, that it is only necessary to refer to the following authorities, Stair, B. iii. tit. 4. § 34; Erskine, B. iii. tit. 9, § 16; Allan *v.* Allan, 17th June 1762, (Mor. 8208). Lawson *v.* Lawson, 6th February 1777, (Fac. Col. vol. vii. p. 367); Lashley *v.* Hog, (in the House of Lords) 16th July 1804, *vide ante;* Millie *v.* Millie, (in the House of Lords, 18th March 1807, *vide ante*). Nor is there any pretence for saying that the respondent, by any act of hers, had homologated her father's disposition. Had they produced receipts for the annuity of £50, for the whole, or any part of the twenty-one years, this homologation or approval of the father's settlement, might have been pleaded with some show of reason, but here there is not the least vestige of anything of that kind, nor of any act to which the law usually attaches the legal consequences of acquiescence.

2. In regard to the heritable subjects belonging to the partnership, the argument of the respondent applies to all those subjects given up in the inventories. These heritable properties were used in the business, and, from their very nature, connected therewith. The dry-dock, and the share in the rope-work, were so connected as to be a part of the company stock. Other heritable subjects were not so used in the business, and not so connected, but they were given up in the inventories. Now, although there was no copartnership here to establish what was stock, and what not, belonging to the company, yet this matter was completely established by certain extracts from the books of John Sime and Son, produced by the appellants in the Court of Session. These extracts consist of inventories of the partnership funds and debts, made up from time to time. The stock of this company, like all other mechanical concerns, consisted of the materials used in the trade, and therefore the very extensive houses and docks which had been purchased and fitted up for the purpose of carrying on the business, as well as the two shares in the Leith Ropery Company, which it

1811.

KIRKPATRICK, &c. *v.* SIME.

had been considered advantageous for the copartnery to hold, as being so much connected with their own business of shipbuilding, and the debts due to the company, are what is divisible into two shares, the one half belonging to the respondent's father, upon which her claim of legitim attaches. 3. The decisions in the Courts of Scotland have been uniform in holding that the heritable estate belonging to a copartnership, used in carrying on the business of the concern, is moveable, both in questions with creditors as in questions of succession. It was so held in Crooks *v.* Tairse, 29th January 1779, Fac. Col. (vol. viii. p. 113, et M. 14596). When an individual partner dies, his interest in the copartnery is not taken up by service, although a great part of the company's estate may consist of heritable subjects, but solely by a confirmation. *Vide* Murray *v.* Blackwood, 25th July 1700, Forbes, vol. i. p. 368, (et Mor. 5478); Dalrymple *v.* Halket, 1st July 1735, Dict vol. i. p. 368, (et Mor. 5478); Murray *v.* Murray, 5th February 1805, Fac. Col. vol. xiii. p. 441. To this effect it does not signify in what manner the feudal title may be vested, whether in one individual or another.

It is sufficient that it belongs to the company as a part of the copartnery property. Partners have no claim upon it of an heritable nature. They have no *pro indiviso* possession, no right to the *ipsum corpus*. It is only a *jus crediti* that they possess. They have merely a right to a share of the *jus incorporale*, and not of the individual subjects; and therefore stock in trade is moveable.

In the inventories of the partnership, made up in 1774 and 1776, before the father's death, there appears the following, among other Company stock and funds, "Houses, prime cost, £2000; dock, prime cost, £2000; Leith Ropery Company, two shares, £500," and these inventories ought to be conclusive.

After hearing counsel,

LORD CHANCELLOR (ELDON) said,—

"My Lords,—

"The first interlocutor in this cause, to which I need call your particular attention, is that of the Lord Ordinary, of the 12th of November 1801. (Here his Lordship read the interlocutor). I must call your particular attention to one or two particulars contained in this interlocutor. It finds, first, That the whole property, heritable and moveable, of John Sime, father and son, fell under the

copartnership, and that this was instructed by the inventories therein mentioned. These inventories were made up at the different periods of 1770, 1771, 1774, and 1776. The language of them is, 'We have in ready money,' &c. (Here his Lordship read the inventories, particularly noticing the words, 'Houses, prime cost, '£2000; dock, prime cost, £2000; Leith Ropery Company, two 'shares, £500).' I wish to call your attention particularly to this, because this interlocutor considers all the property mentioned in these inventories as joint property, in virtue of some supposed previous agreement instructed by these inventories.

"The Lord Ordinary takes a distinction between a partnership ending by the death of one partner, and one where a partnership would not be so dissolved. He considered that in a case of A. and B. being copartners; and A. dying, his next of kin would take the share of the personality of the copartnership, and his heir his share of the real estate; B. retaining his own share of both.

(His Lordship now read the interlocutor of the Court of 17th November 1803). "This so far varies the interlocutor of the Lord Ordinary as to consider the dock in the copartnership moveable property, because it was used in the business of the copartnership. This is different from the opinion of the Lord Ordinary, who considers the inventory as evidence of the property belonging to the copartnership; and the decision of the Court places the ground of decision as to its being moveable property, entirely in the use made of these in connection with the partnership business in trade.

"No case has ever gone so far as this, to say, that if a father and son are partners, and if the father allows to the partnership the USE of the real estate, which belonged exclusively to him, that therefore he must be presumed to have given the half of such real estate to the son.

"The Court takes a distinction between the real estate used in the business of the partnership and that not so *used*. They decide as to what was used, but they leave to future consideration and decision the houses and shares in the Ropery Company, which were not used in the copartnership. This is a very inconvenient way of deciding. If the inventories were good evidence of the whole property being copartnership property, the Court should have decided as to the whole. If the *use* formed the sole ground of decision, the case, as decided, goes a great deal too far.

"The first ground of appeal is, that the respondent is not entitled to her legitim, because she accepted and homologated another provision. That point is not made out, and I shall move the affirmance of all the interlocutors as to this.

"The other point, however, as to the partnership, is of great consequence. As to all partnerships in England, I think the rule is, and the better rule of decision would be, to say, that the partners held the property as trustees for the creditors, and that the whole

1811.

KIRKPATRICK, &c. v. SIME.

became personal estate. If the course of decisions in this country had run uniformly to that effect, I should have thought it right to say, that the same rule of law should prevail in Scotland. But if there have been cases in England ruled differently, I could not advise that the Courts in Scotland should adopt *that* which I consider the best principle of law in such a case.

"Till the case decided by Lord Thurlow,* we lawyers always considered the real estate belonging to a partnership as personal in point of succession; and we have always wished to get out of this case of Lord Thurlow.

"There may be great difficulties in Scotland in making up a title to real estate when used by a partnership. We must look into the cases to see if they rule this.

"If the case is to be decided on the inventories, I don't see why it should not apply also to the tenements and the shares in the Ropery Company. The printed cases have supposed that this will decide also as to them; but I think this is not so; unless you can predicate that these were used in the partnership, they will not fall under the rule. If the decision is *not* to go upon the USE, then the other real property in the inventories will go along with the dock.

"But there is this difficulty here, that if the Court should hold the other property not to be held as moveable, the only *ratio decidendi* would be the *use* of the dock.

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* The name of the case here referred to, was not given; but the Compiler of these reports suggests that his Lordship referred to the case of Thornton *v.* Dixon, 3 Bro. C. C. 199 Belt's ed. p. 84. In that case, Lord Thurlow had decided, that, after the dissolution of the partnership, by death or otherwise, "the heritable estate of a partnership could not be consi-"dered as personality, but would resume its original character and na-"ture," and descend accordingly. Since that decision, and also one which followed it, (Bell *v.* Phyn, 7 Vesey, p. 452), many cases had been decided in a contrary way, holding that such estate was to be dealt with as personality in questions between heirs and executors. The decision of Lord Thurlow was thus considered to have been overruled by the later decisions; but later still, two decisions have been pronounced confirming the judgment of Lord Thurlow. These were cases pronounced in the Vice Chancellor's Court, Cookson *v.* Cookson, 12th July 1837; 8 Sim. Cases in C. p. 529; and Randall *v.* Randall, 27th Jan. 1835, 7 Sim, C. C. p. 271.

But Lord Eldon was always of opinion, that the estate of a partnership, whether heritable or moveable, in its own nature ought to be considered as personality to all intents and purposes. He decided this in Mackintosh *v.* Townshend, Montg. Partn. App. 96. He also repeated that opinion (*obiter*) in Selkrig v. Davies, 1814, 2 Dow, p. 231. Yet Mr. Collyer on Partnership, (1840), states, that "since the case of Cookson *v.* Cookson "was decided, the question cannot be considered as settled by that deci-"sion; but that it must, on some future occasion, be determined before "a higher tribunal."

"We must therefore remit to the Court to review their judgment as to the dry dock, and to consider as to this along with the other property."

It was therefore ordered and adjudged, That the several interlocutors complained of, so far as they find that the pursuer is still entitled to claim her legitim, be, and the same are hereby affirmed; and it is further ordered, that the cause be remitted back to the Court of Session to review the interlocutors complained of, as to all other matters, and particularly to determine, at one and the same time, upon the rights of parties with respect to the dock and pertinents, the tenement of houses, and the share in the Ropery Company, mentioned in the interlocutor, dated 17th, signed 22nd November 1803.

For the Appellants, *John Clerk, James Moncreiff.*

For the Respondent, *Sir Sam. Romilly, David Cathcart, Robert Bell.*

NOTE.—It is stated in the Faculty Collection, vol. xvii. p. 684, that after the remit back to the Court of Session, "the case was set-"tled extrajudicially, in consequence of the defender having paid a "considerable sum of money to the pursuer" (respondent).

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THE HON. CHARLES FLEMING of Cumbernauld, *Appellant;*

GEORGE HARLEY DRUMMOND, Esq. one of the Freeholders of the County of Kincardine, . . . . . } *Respondent.*

House of Lords, 23d July 1811.

FREEHOLD QUALIFICATION—FICTITIOUS RIGHT TO VOTE.—In this case, objections were stated to the claim of a party claiming to be enrolled as a voter. The Court of Session sustained the objections, without taking or ordering any proof as to the fictitious nature of the claim. In the House of Lords, case remitted, with liberty to receive such evidence.

The appellant being seized and possessed, as a liferenter or tenant for life, of certain lands in the county of Kincardine, called the Kirklands of Kinneff, &c. held by him immediately of the Crown, and those lands being of an extent which by law entitles the holder to vote in the election of a