CASES

DECIDED IN THE HOUSE OF LORDS,

ON APPEAL FROM THE

COURTS OF SCOTLAND,

1822.

MURDO M'KENZIE, Appellant.—*Moncreiff—Skene.* No. 22.
DAVID Ross and his CURATORS, Respondents.—*Adam—Cockburn—Maitland.*

Jury Court—55. *Geo. III. c.* 42.—*Held*.—An action of damages for trespass having been remitted to the Jury Court, and a view ordered—Held, (affirming the judgment of the Court of Session,) 1. That the viewers are to be selected from the first twelve of the jurors returned for the county where the property is situated, and the view to be taken, although lists for other counties belonging to the same circuit may have been delivered; 2. That a bill of exceptions is not a competent mode of objecting to these viewers acting as jurors on the trial; and, 3. That a motion for a new trial, founded on that objection, being refused, no review is competent.

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1ST DIVISION.
Lord Alloway.

M'KENZIE, the proprietor of the estate of Ardross situated in Ross-shire, brought an action against David Ross, the proprietor of the adjoining estate of Milncraig, alleging that the late David Ross, the defender's father, 'did frequently in his lifetime molest 'and interrupt the pursuer in the peaceable possession of his said 'lands and estate; and since his death, the said David Ross, now of 'Milncraig, and his factors and tenants, or others in his name and 'by his desire, and for whom he is answerable, without any warrant 'of law, or by the pursuer's consent, have been in the constant 'practice of troubling and molesting the pursuer in the peaceable 'possession and enjoyment of his said lands and estate: And par-'ticularly, the said deceased David Ross having purchased the 'said estate of Milncraig, comprehending the lands of Rosshill, 'and having erected a farm-house upon these lands, which are 'bounded by the pursuer's lands of Tolly, the said deceased 'David Ross did, by himself or others of his causing, illegally 'and unwarrantably break down the march-dike which divided

Feb. 15. 1822. 'his property from that of the pursuer, and forcibly make a pass-
'age through the pursuer's grounds from Taynauld to the house
'so built by the said David Ross upon the said lands of Rosshill:
'And although the pursuer has since at various times attempted to
'make up, and had actually made up, the march-dike so broken
'down, and enclosed his grounds in that quarter so as to prevent
'encroachment thereon, the said deceased David Ross continued
'during his lifetime, and since his death the said David Ross, now
'of Milncraig, and his factors and tenants, still continue most il-
'legally and unwarrantably to break down the said march-dike as
'often as the pursuer builds up the same, and to force their way
'through the pursuer's grounds, by keeping open a slap in the said
'march-dike, and also by breaking down another dike erected by
'him upon his grounds near the burn of Taynauld, to the great
'molestation and loss and damage of the pursuer and his ten-
'ants.' He therefore concluded that Ross ought to be ordained to desist from doing so in future, and be found liable in £2000 of damages. In defence, Ross denied the allegations in the summons, and averred that he had made use of no road through M'Kenzie's property, to which he had not a just right by his titles, and by the immemorial possession of his ancestors. After a condescendence and answers had been lodged, the case was remitted to the Jury Court, where the following issues were prepared, and afterwards approved of by the First Division of the Court.
'Whether the road leading from the pursuer's property of Tay-
'nauld to Rosshill-house, the property of the defender, was first
'made in 1796 by the defender's father breaking through the
'march-dike that separates the defender's property from that of
'the pursuer: And the pursuer having endeavoured to put a stop
'to the said encroachments, by rebuilding the march-dike or other-
'wise, Whether the defender, by himself or others acting in his
'name, and for his behoof, had broke down said dike as often as
'it had been rebuilt, and continued the said encroachment on the
'pursuer's property by using it as a road, to the loss and damage
'of said pursuer: Or whether the said road has been used as a
'public road from time immemorial.' The trial was appointed to take place at Inverness, and precepts were issued to the Sheriffs of Inverness, Ross, Elgin, Cromarty, and Nairn, to have the requisite number of jurors in attendance. These precepts were duly executed; and it being considered necessary that a view of the ground should be taken by some of the jurors, and the parties being unable to agree as to the persons who should so act, the clerk of the Jury Court, in terms of the 29th section of the Geo. III. cap. 42, issued a precept to the Sheriff of Ross to cause the

six jurors first named in his list to attend and officiate as viewers. These persons accordingly attended, and they were shown the lands by M'Kenzie, and others who had been nominated to act as showers. When, however, the case came on for trial at Inverness, and it was proposed to swear five of these viewers as jurors, he objected that they had not been authorized to act as viewers in terms of the statute; because by the above section it is enacted, 'That if the parties cannot agree, six or more of the first 'twelve on the list of jurors returned by the Sheriff, Steward, or 'other officer or officers as aforesaid, shall have the view, and shall 'be first sworn, or such of them as shall appear upon the jury to 'try the issue before any drawing as aforesaid;' that the viewers ought to have been taken from the list returned by the Sheriff of Inverness, whose list must be held (according to the practice of the Court of Justiciary) to have been the first in order; and that it was therefore incompetent to take the viewers from the list delivered by the Sheriff of Ross-shire. To this it was answered, that there was no rule by which the list of the Sheriff of Inverness could be considered as the first in order; that a precept to him to summon the viewers would have been unavailing, because he could not have compelled them to go into the county of Ross, where the lands were situated; and as the viewers had been taken from the first six in the list returned by the Sheriff of Ross, the statute had been duly complied with. Lord Pitmilly, as Lord Commissioner, having repelled the objection, and declined to sign a bill of exceptions which was tendered by M'Kenzie's counsel, the viewers were sworn as jurors. The jury having returned a verdict, declaring that, 'in respect of the matters 'of the said issue proven before them, they find for the de-'fender,'—M'Kenzie made a motion in the Court of Session for a new trial in respect of the above objection, and that the verdict was contrary to evidence. He at the same time made a similar motion in another case which had been tried between him and Ross on the same occasion, and where the same objection had been stated by him.* The Court appointed counsel to be heard on both of these motions; and after hearing them as to that in relation to the other case, they 'refused the motion for a new 'trial, and declared the verdict conclusive.' M'Kenzie then allowed the motion in this case to be dismissed, and moved the Jury Court to appoint the bill of exceptions to be signed by Lord

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* See the next case.

Feb. 15. 1822. Pitmilly. This was refused as incompetent;* and the process having been transmitted to the Court of Session, the Lord Ordinary, in respect of the verdict, assoilzied Ross, and found him entitled to expenses. Against this interlocutor M'Kenzie offered a representation, but the Lord Ordinary refused it 'as incompetent;' and the Court, on the 1st of June 1820, adhered.† He then appealed to the House of Lords, on the ground, 1. That the viewers had not been appointed in terms of the statute; 2. That Lord Pitmilly ought to have signed the bill of exceptions; and, 3. That if the objection to the viewers was well founded, they were objectionable as jurors, and the case must therefore be considered as if no verdict had been returned. To this it was answered, 1. That the objection was finally disposed of, in terms of the statute, by the motion for a new trial being dismissed, and by the verdict being applied; 2. That the objection was in itself unfounded, and was inconsistent with a fair and proper interpretation of the statute; and, 3. That the bill of exceptions was incompetent, because it did not apply to a proceeding pending the trial, but to one which was necessarily preliminary to it. The House of Lords 'Ordered 'and adjudged that the interlocutors complained of be affirmed, 'with £100 costs.'

The Lord Chancellor, after mentioning the nature of the summons, and subsequent procedure, observed:—My Lords, before I proceed to state further to your Lordships what has taken place in this case, your Lordships will allow me to say, that I entirely agree in what has been stated from the Bar, that as this is the first case which has come before us with reference to the proceedings of the Jury Court in Scotland, it is a case that deserves great attention. But, my Lords, I cannot agree with any proposition, (if such proposition be meant to be stated,) as that we are therefore to give relief in this case beyond what is given by the statute. The later statute, indeed, can hardly be said to apply to this case, for it did not pass until 1819. I think we are to take care to give relief according to our legal power of giving relief; and if any relief is asked of us, which the powers belonging to us as a Court of Appeal do not authorize us to give, it is not on account of any

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* See 2. Murray's Reports, p. 20, where it is stated that the ground of the refusal was thus explained by the Lord Chief Commissioner: 'We must refuse this application, 'as it relates to a matter preliminary to a trial. If granted, it would be set aside in 'the House of Lords for irregularity, a bill of exceptions not being the remedy for such 'a proceeding. It is like an objection to the notice or summons of a witness, which may 'occasion what is termed a mis-trial, the remedy for which is not a bill of exceptions, 'but an application for a new trial.'

† Not reported.

desire we may have to increase the powers of the Jury Court, that we can give them further power. It is our duty to act according to the law, to the extent of those powers:—to that extent we ought to give relief; but beyond that we cannot go. Feb. 15. 1822.

My Lords, in the first attempt to apply the trial by jury to Scotland, it was thought infinitely too hazardous to infuse the whole of the English law of trial by jury into Scotland, and that it would be better to do it by degrees, than to introduce at once the whole of a subject that could not be immediately, fully, and well understood; and great care was taken by those who composed this act in the year 1815—or rather, I should say, by those who drew this act in the year 1815—great care was taken to avoid the mischief that might result from dilatory proceedings.

My Lords, the first enactment of the act I have in my hand is, that as soon as his Majesty shall appoint Judges to form a Court for the trial of issues in civil causes, where matters of fact were to be proved, either Division of the Court was empowered to order and direct, by special interlocutor, such issues as may appear to them expedient for the due administration of justice, to be sent to that Court so to be formed by his Majesty, that such issues might there be tried by a jury in manner therein after directed. The act then proceeds to provide in what manner the Lord Ordinary should report to the Division of the Court for that purpose, and in what manner the Judge of the Court of Admiralty should report to either of the Divisions for this purpose; and then it expressly enacted, 'That it shall not be competent, either by reclaiming petition, or appeal to the House of Lords, to question any interlocutor granting or refusing such trial by jury.' Your Lordships will see here, that there is great care taken to prevent delay; for this clause not only denies the competency of an appeal to the House of Lords, but it denies the competency of an appeal by reclaiming petition.

The sixth section is the next which it is material to point out to your Lordships, and it is in these words:—'Be it further enacted by the authority aforesaid, that in all cases in which an issue or issues shall have been directed to be tried by a jury, it shall be lawful and competent for the party who is dissatisfied with the verdict, to apply to the Division of the Court of Session which directed the issue for a new trial, on the ground of the verdict being contrary to evidence — on the ground of misdirection of the Judge—on the ground of the undue admission or rejection of evidence—on the ground of excess of damages, or of res noviter veniens ad notitiam—or for such other cause as is essential to the justice of the case.' So that your Lordships observe here, that if the party is dissatisfied with the trial, he may apply for a new trial on any of the special grounds which are here mentioned, or on any ground which he can represent to the Court, as affording cause for a new trial essential to the justice of the case. And, my Lords, undoubtedly it may happen that the Court of Session may mistake in their conclusion upon the question, whether the verdict be contrary to evidence;

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—they may possibly mistake, if an application is made upon the ground of the misdirection of the Judge;—they may possibly mistake, if the application is made upon the ground of the undue admission or rejection of evidence;—and they are the more likely to mistake, if the ground is, that there is some cause, essential to the justice of the case, for assigning such new trial, as that opens to very large consideration. But the Legislature was so well satisfied that giving the party an opportunity to appeal here upon the refusal of a new trial would lead to constant applications to this Court, even where there was no cause for such application, that it was thought, at the time this act passed, to be a much less mischief to deny in any case an appeal to this House where a new trial was refused, than to grant a new trial; and the act accordingly provided that such interlocutor granting or refusing the new trial shall not be subject to review by reclaiming petition, or by appeal to the House of Lords.

Then, my Lords, it became necessary likewise to make some provision not only for new trials, but for what are known in the law of England by the description of bills of exception; and the seventh section applies to that subject in these terms:—'That it shall be competent to the counsel for any party, at the trial of any issue or issues, to except to the opinion and direction of the Judge or Judges before whom the same shall be tried, either as to the competency of the witnesses, the admissibility of evidence, or other matter of law arising at the trial.' It is not a general enactment that it shall be competent at the trial to except to the opinion of the Judge or Judges in all cases in which an issue or issues shall have been directed to be tried by a jury; but it is, that it shall be competent to take that exception, either as to the competency of the witnesses, the admissibility of evidence, or other matter of law arising at the trial, (and your Lordships will see presently what is the point in controversy with respect to these words, 'or matter of law arising at the trial'); and 'that, on such exception being taken, the same shall be put in writing by the counsel for the party objecting, and signed by the Judge or Judges; but, notwithstanding the said exception, the trial shall proceed, and the jury shall give a verdict therein for the pursuer or defender, and assess damages when necessary; and after the trial of every such issue or issues, the Judge who presided shall forthwith present the said exception, with the order or interlocutor directing such issue or issues, and a copy of the verdict of the jury indorsed thereon, to the Division by which the said issue or issues were directed; which Division shall thereupon order the said exception to be heard in presence, on or before the fourth sederunt day thereafter.'

My Lords, it is not immaterial to call your Lordships' attention to this, 'that the exception is to be heard in presence on or before the fourth sederunt day thereafter:' That, I apprehend, was also to prevent delay. 'And in case the said Division shall allow the said excep-

'tion, they shall direct another jury to bē summoned for the trial of the 'said issue or issues; or if the exception shall be disallowed, the ver- 'dict shall be final and conclusive, as herein after mentioned: Pro- 'vided always, that it shall be competent to the party against whom 'any interlocutor shall be pronounced on the matter of the exception, 'to appeal from such interlocutor to the House of Lords, attaching a 'copy of the exception to the petition of appeal, certified by one of the 'Clerks of Session; so as such appeal shall be presented to the House of 'Lords within fourteen days after the interlocutor has been pronounced, 'if Parliament shall be then sitting; or if Parliament shall not be sit- 'ting, then within eight days after the commencement of the next ses- 'sion of Parliament, but not afterwards.' The part which I have now read, therefore, provides for the speedy application to Parliament by presenting the petition. The section goes on to require Parliament speedily to hear the matter with respect to which such application shall have been made: 'And so as the proceedings on such appeal do conform 'in all respects to the rules and regulations established respecting appeals; 'and every such appeal shall be appointed to be heard on or before the 'fourth cause *day after* the time limited for laying the printed cases in 'such appeal upon the table of the House of Lords;'—giving, as your Lordships see, these appeals a priority to other appeals;—'and upon 'the hearing of such appeal, the House of Lords shall give such judg- 'ment regarding the further proceedings, either by directing a new 'trial or otherwise, as the case may require.' And then it states, 'That 'if a new trial shall be refused, or if the exception taken to the opinion 'and direction of the Judge or Judges shall be disallowed, the verdict 'shall be final and conclusive as to the fact or facts found by the jury, 'and shall be so taken and considered by the Court of Session or the 'Judge Admiral respectively in pronouncing their judgment, and shall 'not be liable to be questioned any where.'

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The sixth section, therefore, provides for the case of motion for new trial; the seventh section provides for the case of bills of exception; and the sixth, seventh, and eighth sections, taken together, provide for the refusal of new trial being final, and for what is to be done in matters of bills of exception, and for speedy judgment upon questions arising upon bills of exception.

My Lords, it is necessary to point your Lordships' attention farther to the ninth section of this act of Parliament, because the question at present is, upon what is the true construction of that act of Parliament. That section is in these words: 'Provided always, that in all cases 'wherein the Court shall pronounce a judgment in point of law, as 'applicable to or arising out of the finding by the verdict, it shall be 'lawful and competent for the party dissatisfied with the said judgment 'in point of law, to bring the same under review, either by representa- 'tion or reclaiming petition, or by appeal to the House of Lords; or 'where the Judge Admiral shall have pronounced judgment in point of

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'law on the verdict, it shall be lawful and competent for the party or 'parties to bring the same under the review of the Court of Session, 'as heretofore.' By which I understand the Legislature to have enacted, that if there be a verdict, and if upon that verdict a judgment is given in point of law which is not applicable to the facts found by that verdict, there may be a reclaiming petition, or an appeal. But if there be a verdict, and if a motion has been made to set aside that verdict, and an application has been made for a new trial, and that motion has been refused, then the verdict still stands as a verdict; and to that verdict, undisturbed by the motion for a new trial, sanctioned by the interlocutor refusing a new trial,—if the judgment in point of law be applicable to that verdict which has been ineffectually impeached,—it appears to me that under this ninth section there is no pretence for saying (whether the Court were wrong or right in their opinion upon the verdict) that the judgment of law, taking the verdict to be a verdict not impeachable, shall be impeached here, if the judgment of law be applicable to that verdict. My Lords, I take the liberty of saying so, because it appears to me, that under the circumstances I am about to mention, you must either consider this as an appeal within the intent and meaning of the act of Parliament, or say it is an appeal founded upon some power you have to entertain it, independently of the act of Parliament.

The case, my Lords, was this, according as it is represented in these papers: There being a list of jurors of that part of Scotland named for either four or five counties—

Mr. ADAM.—Five counties, my Lord; but two of the counties stand only for one.

LORD CHANCELLOR.—Taking them at four or five, it comes to pretty much the same; and the statute having directed that six of the first twelve are to be the viewers, and the five counties, or the four counties having four Sheriffs, (the locus in quo being in Ross,) the jurors for the county of Inverness stood first upon the list; and then this difficulty arose, whether the gentlemen of Inverness were or were not to be the viewers, as jurors, to try a question with respect to this supposed trespass which had occurred within the county of Ross;—and in as much as the Sheriff is required to bring the persons together who are to take the view, the officer by whom the precept was to be issued came to be of opinion, that unless there was special authority that could be resorted to, so as to enable the Sheriff of Inverness to bring the jurors of Inverness-shire into the shire of Ross, the jurors of Ross must be considered as the persons to proceed upon this view. Accordingly the clerk, or some officer of that kind, who appears to be very much blamed in these papers, did that which I think was very right—namely, took the opinion of the Lord Commissioner upon the way in which the jurors should be summoned;—and it does appear to me, either that the parties could have no view at all, in which case (notwithstanding the order for a view under another

clause in the act of Parliament) this trial must have proceeded without a view, or the jurors of Ross must be considered as having been the proper viewers. Feb. 15. 1822.

It is said that the Jury Court could have given some order upon this subject. It appears to me the Lord Commissioner was quite right, and that unless these papers greatly misrepresent the matter, there was no opportunity of so applying. But, supposing the fact to be that the jury was ill constituted,—admitting that, for the moment, (which is contrary to the opinion I am about humbly to state to your Lordships,)—but supposing the fact to be that the jury was ill constituted, what relief can we give in this case?

It is said that at the trial there was a bill of exceptions tendered to the Judge. Now, really those who insist that they are to proceed exactly in the same way as proceedings are had in England on bills of exceptions, would find it extremely difficult to make out that there was a bill of exceptions; but supposing that there was a bill of exceptions tendered to the Judge, and that the ground was the mal-constitution of the jury, (if I may so express it,) the Judge was of opinion that he could not receive a bill of exceptions upon such a subject. I am not now entering upon the question, whether, by analogy to the fact that a bill of exceptions may be tendered in this country with reference to a challenge of the jury, a bill of exceptions could be tendered for this matter in this cause when it was before Lord Pitmilly. I think there is great weight in the construction to be given of the clause I have read with respect to the bill of exceptions, and that it is not quite a conclusive argument to say, that any thing which happens in the Court where the trial is to be had, is within the intent and meaning of this clause, as 'matter of law 'arising at the trial.' As Mr. Adam says, you must take these words in fellowship with them, 'competence of the witnesses,' and so on. But put it, if you please, that this jury was not well constituted, it is quite unquestionable this might be, if not a ground for a bill of exceptions, at all events a ground for a motion for a new trial. Now, a motion was made for a new trial, and that motion was made on two grounds; 1. The mal-constitution of the jury; 2. That the verdict was against evidence. The application being made for a new trial upon these grounds, it is dexterously stated that it was found that motion could not be successfully pursued, and therefore the party withdrew it, but it was dismissed by an interlocutor of the Court. Then there is an interlocutor of the Court deciding that there shall be no new trial. If, then, there be an interlocutor of the Court deciding that there shall be no new trial, is not the section I have read quite decisive that we cannot review that interlocutor? I desire it to be understood, that I am giving no opinion whatever whether there may or may not come a case before the Court, in which the law has been finally applied by the Court of Session; and being finally applied by the Court of Session, this House cannot say, looking at the proceeding from the beginning to the end, that it may be

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necessary to begin again in some way or other. That is a question much too large for the present occasion; for, in the ultimate proceeding here, there is no ground for discussing that.

Then if we are prevented from granting a new trial because there has been that interlocutor,—and that we are prevented from granting a new trial because there has been that interlocutor, I have no manner of doubt;—because, where the Legislature has told me I shall not interfere in such a case, it is no question I am to address to my own mind, whether it would be better I should interfere in such a case. The Legislature has withholden the power, and therefore it cannot be exercised in the case. Then with respect to the bill of exceptions, (which is stated in the other case,* though not in this,) in the first place, it is not brought here in time; and if it were, it is not brought here according to the direction of the 8th section; and not being brought here within the 8th section of the statute, the counsel have very properly abandoned it, and stated that they cannot support it, if the House should be of opinion that in this case relief cannot be given; and how relief can be given, (unless it is under the 9th section,) I know not. I have a clear and decided opinion with respect to the 9th section; because, if this might have been impeached before the Division of the Court of Session, and has been impeached before the Division of the Court of Session in a motion for a new trial, and if that new trial has been refused, the consequence of that refusal of the new trial is, that the verdict is not questionable any where. It is no longer a nullity—it is a verdict; and being a verdict, the only question then is, whether the judgment which has been since given with respect to the law, is applicable to those facts which must be considered as a verdict, whether that judgment is right or wrong? And taking the facts to have been conclusively found by that verdict, and that it is to be considered as a verdict, it appears to me that the subsequent judgment which has been given, is the judgment which could be alone applicable to the facts so found. Under these circumstances, my Lords, it does appear to me (stating it most humbly to your Lordships) to be our duty to affirm the judgment of the Court below; but I am likewise of opinion that this is a case in which, to follow out the spirit in which the act has been made, the Court ought to give costs. In the first place, if the question relates to a matter of right, one has perhaps no reason for saying that still it may not be an important matter, however little importance one would attribute to the particular subject in dispute; but in a case which appears to me as clear as this case does, I am of opinion that, in furtherance of the intention of the Legislature in a case of this nature, the judgment ought not to be affirmed without something like a remuneration to this party in point of costs; and therefore, after I have learned what sum it may be right

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* See the next case.

to move your Lordships to mention in your judgment in respect of costs, it does appear to me that it will be a very wholesome proceeding, in both these cases, to dismiss the appeals, with such costs as your Lordships may think proper to give. Feb. 15. 1822

FRASER,—J. CAMPBELL,—Solicitors.

(*Ap. Ca. No.* 1.)

MURDO M'KENZIE, Appellant.—*Moncreiff—Skene.*
DAVID Ross and his CURATORS, Respondents.—*Adam—Cockburn—Maitland.*

No. 23.

Proof—Jury Court—55. *Geo. III. c.* 42.—An action of damages for trespass having been remitted to the Jury Court, and a view ordered—Held,—1.—That the viewers are to be selected from the first twelve jurors in the list returned for the county where the property is situated, and where the view is to be taken, although lists of other counties belonging to the same circuit have been delivered.—2.—That a bill of exceptions is an incompetent mode of objecting to these viewers acting as jurors on the trial.—3.—That a motion for a new trial, founded on that objection, being refused, all review quoad hoc is incompetent.—4.—That, in particular circumstances, parole evidence, explanatory of the situation of marches, is admissible, although there be a written contract in relation to them; and,—5.—That a bill of exceptions against such evidence being disallowed, and no appeal taken within fourteen days thereafter, review is incompetent.

Hill. I. 539.

M'KENZIE, proprietor of Ardross in the county of Ross, brought an action against Ross, an adjoining proprietor, stating, 'That the said David Ross has taken it upon him, most illegally 'and unwarrantably, to build a house upon a part of the hill or 'muir of Tolly, which is the absolute and undoubted property of 'the pursuer: That part of the said hill or muir having been adjudged to belong to the estate of Ardross by a contract entered 'into, in the year 1757, between the pursuer's grandfather and 'the now deceased Captain Cuthbert of Milncraig, and exclusively possessed by the pursuer and his predecessors ever since 'that time; and although the pursuer has uniformly claimed 'right to the exclusive possession of the part of the said hill or 'muir of Tolly so found to belong to the said estate of Ardross, 'yet the said defender, by his tenant Donald Munro M'Finlay, 'most illegally and improperly keeps possession of the house so 'built by him upon the pursuer's said exclusive property.' He therefore concluded that Ross should be ordained to demolish and remove the house,—to cease from molesting him in future,—and to pay £1000 of damages. These allegations being denied, the following issues were prepared, approved of by the First Divi-

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1ST DIVISION. Lord Alloway.