(decided 13th July 1797). What was the decision? It is of no use attempting to retire from that decision, for, according to my apprehension, it is a decision which binds your Lordships. The decision distinctly was, first of all, that the patent of 1488 was struck at and destroyed by the act of 1488. And the decision further was, that, finding a sitting of the Earl of Glencairn in 1505, you must not refer that sitting to the patent of 1488, for it did not exist, and that therefore you cannot infer a limitation to heirs general, but you must refer it to some other patent which you have not got. And then, on looking to see how the sitting was, and finding that it was always in the succession of heirs male to the exclusion of heirs general, the presumption of law is, that the last grant must have been to heirs male. And the claimant was therefore held not to have made out his title. It would indeed require a strong case to have persuaded your Lordships that you have now the power to come to a different conclusion upon this case. This is brought forward simply as a precedent, and your Lordships have had to travel, day after day, through the case of the Earldom of Glencairn as if you really were re-trying that very case, when it is only quoted as a precedent; and if precedents that are quoted are to occupy so large a portion of time, there is no reason why a claim of this sort should not last as many months instead of so many days.

Disposing then, my Lords, of these two precedents, the case appears to me to be perfectly clear. After all the labour that has been bestowed upon it, and the great mass of evidence which has been produced, and its importance to the claimant of the title, considering the great dignity claimed, I have looked at it with as much anxiety as I ever looked at any case, and with a sincere desire, if there had been any well-founded grounds for the claim, to give every possible effect to those grounds. On the other hand, with an equal desire to render fairness and justice towards the Crown and the public, and towards those persons who think themselves aggrieved by the claim, to see that the claim was not allowed, except upon solemn, legal grounds; and I have come to a very clear conclusion, never more clear upon any point in my life, that there is no foundation for the claim which has been set up, and I entirely concur in the resolutions which have been moved by my noble and learned friend. I ought to state to your Lordships, that my noble and learned friend, LORD BROUGHAM, authorized me to say that he concurs entirely in the resolutions which have been just proposed to your Lordships. And my noble and learned friend, LORD LYNDHURST, desired me to state, on his behalf, that he entirely concurred upon these two points: First of all, that the act of 1488 was a revocation of the dignities; and secondly, that he thought that the construction was clearly that which I have just pointed out to your Lordships. But he desired me to add, that he gave no opinion upon any other part of the case, as he had not heard the whole of the arguments, and had not sufficiently followed the case in its subsequent bearings. Therefore he begged me to confine his concurrence to those two grounds, namely, as to the general effect of the act as rescinding or annulling the grant which had been made, and as to the true construction of the act.

The Committee resolved—That the charter, bearing date the 18th day of May 1488, by which James III. of Scotland granted the dukedom of Montrose to David Earl of Crawford *et hæredibus suis*, was annulled and made void by the act of the first year of the reign of King James IV. of Scotland, called the Act Rescissory: That the grant of the dukedom made by King James IV. to the said David Earl of Crawford, in 1489, was a grant for the term of his life only; and that the petitioner, James Earl of Crawford and Balcarres, had not established any title to the dukedom of Montrose (created in 1488).

Agents for the Claimant.—Law, Holmes, Anton and Turnbull, London; and Alexander Smith and James Carnegie, Jun., W.S.—*Crown Agent*, John Richardson.—*Agents for the Duke of Montrose*, Maitland and Graham, London; and Dundas and Wilson, C.S.

FEBRUARY 13, 1854.

THE EDINBURGH WATER COMPANY, and ALEXANDER RAMSAY, their Manager, *Appellants*, *v.* JOHN HAY, Inspector of the Poor of the City Parish of Edinburgh, *Respondent*.

Poor Law Amendment Act (1845)—Assessment—Water pipes under streets—

HELD (affirming judgment), *in terms of the Poor Law Amendment Act, which provides—"That one-half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants, of all lands and heritages within the parish or combination, rateably, according to the annual value of such lands and heritages,"—that the Edinburgh Water*

Company are assessable both as owners and occupiers of the ground under the streets of the city, in which their main pipes for the conveyance of water are placed[1]

The Water Company appealed, pleading that the judgments of the Court of Session should be altered, for the following reasons: "1. Because the subjects, on which the appellants are sought to be assessed for poor rates as owners and occupants, are not 'lands and heritages' within the meaning of the Poor Law Amendment Act, in respect of which an assessment can be imposed for the support of the poor of the burghal parish of Edinburgh. *Parish of West Kirk*, Mor. 10,577; *Parish of Inveresk*, Mor. 10,585. 2. Because the appellants are not owners, or tenants, or occupiers, in the sense of the statute, of lands and heritages, in respect of their pipes and the space which they occupy under the streets of the burgh. *Galbraith* v. *Armour*, 4 Bell's App. 374; *Chelsea Water Works* v. *Bowley*, 17 Q.B. 358. 3. Because, even on the supposition that the portion of the soil under the streets through which the pipes run, is a subject in respect of which an assessment may be levied, such assessment is illegal, in respect that it is a double rating for one and the same subject, and is unauthorized by the Poor Law Amendment Act."

The respondent supported the judgments appealed against on the following grounds: "1. According to the sound construction of the Statute 8 and 9 Victoria, cap. 83, the portions of ground under the streets of Edinburgh, in which the water pipes of the appellants are laid, fall under the description of lands and heritages; and as such are liable to be assessed for relief of the poor of the city parish. 2. The appellants are liable to be assessed for relief of the poor of the city parish, both as owners and occupants, in the sense of the Poor Law Act, of the portions of ground under the streets of the city, in which their water pipes are laid. *Dundee Gas Company*, 9 D. 1084. *Anderson*, 1 D. 656; 9 D. 402. *The King* v. *Rochdale*, 1 M. & S. 634. *Chelsea Water Works*, 5 B. & Ad. 156. *The King* v. *Mersey Co.*, 9 B. & C., 112. *R.* v. *Brighton Gas Co.*, 5 B. & C. 466. *The Queen* v. *The Cambridge Gas Co.*, 8 Ad. & El. 73. *See* Chitty's Burn's Justice, vol. iv., p. 152, 194, 196, and 199."

Sol.-Gen. (Sir R. Bethell), and *Sir F. Thesiger*, Q.C., for appellants. The proper mode of viewing this question is to ascertain—1, what is the nature of the interest we hold in the soil; and, 2, whether the Poor Law Act has changed the nature of such interest. I. As to the nature of our interest. The Act of Incorporation, 59 Geo. III., c. 116, § 33, empowered us to contract and agree for the absolute purchase of any lands which we required for the purposes of the act, and to hold the same when so purchased. The important § 68 authorized us to lay down pipes in the streets, but there are no words conveying to us the absolute right of ownership to any part of these streets. All that we acquired was a mere power—a mere right to use a part of the soil in a certain way, and for a limited purpose, viz., to lay down our pipes, and beyond that we have no interest whatever. This is obviously, therefore, nothing but a mere servitude. We stand on the same footing as those having a right of way or of drainage through the soil of another, and we are no more liable to be assessed as owners of such soil than those who use the footpath. This is clear from *Doe d. Finch* v. *Archbishop of York*, 14 Q.B. 81, where it was held, that a statutory power to form a canal gives no right to the soil itself. A servitude is therefore not to be confounded with the ownership, and we cannot be said to be owners under our incorporating statute. II. The Poor Law Act of 1845 was not intended to alter the rights of property. The lands and heritages contemplated by that act obviously include only the visible and solid rights of property as distinguised from the trivial kind of interest we possess. Besides, §§ 33 and 43 imply that the lands contemplated were such as had owners. Now the sole owners of the streets are the corporation of the city, as grantees of the Crown, or, where the streets are without the bounds, then the owners of the adjoining houses. *Galbraith* v. *Armour*, 4 Bell's App. C. 374. The interest in the nature of a servitude which we possess is quite compatible with the plenary right of ownership in some other persons. The whole structure of the Poor Law Act was to indicate ownership as the test of liability, for occupancy is not *per se* assessable. We are not owners, therefore, in the ordinary sense of that term. Nor does the interpretation clause bring us within the statutory definition. We are not within the enumerated list of subjects in § 1. A servitude is not included within land and heritage. Nor can we be called owners in the sense of receiving the rents and profits, for we have no power to let our works, and to derive rents and profits in that sense. The Lord Ordinary below relied greatly on the analogy of English cases under the Statute 43 Eliz. c. 2; but he forgot that that statute visited occupiers only, and had nothing to do with owners, which makes all the difference. We admit that it has been decided over and over in England, that to use the soil for the purpose of laying water or gas pipes is a sufficient occupation within the meaning of that statute. *R.* v. *Rochdale Water Works*, 1 M. & S. 634; *R.* v. *Mayor of Bath*, 14 East, 609; *R.* v. *Chelsea Water Works*, 5 B. & Ad. 156. But the Scotch Act contemplates ownership as the root of liability,

[1] See previous report 12 D. 1240; 22 Sc. Jur. 562. S. C. 1 Macq. Ap. 682; 26 Sc. Jur. 240.

and those cases are no authorities, even by way of analogy, to shew that under the Scotch Act we would be liable. Ownership and occupancy are distinct things. All those English cases merely shew that the Courts have construed liberally the word 'occupiers' under the Poor Law Act; but the same liberal construction is not extended to cases to which that act does not apply. Thus, in *R.* v. *East London Water Works*, 18 Q.B. 705, where the words simply varied, and in another case, *ibid.*, p. 49, which was that of a Lighting Act, the Courts adopted a different construction.

But a still stronger case was *Chelsea Water Works* v. *Bowley*, where a water company were sought to be made liable to the land tax in respect of their water pipes, these being alleged to be "lands and hereditaments," which is the English for "heritages." All the poor law cases were then brought before the Court, and yet Lord Campbell held the company were not liable, because they had nothing but an easement or servitude. That was the very case which we have here. Probably if those cases under the Statute of Elizabeth had occurred now, they would not be decided as they have been, and as this is an entirely new case in Scotland, the more rational construction should be laid down.

Rolt Q.C., and *Anderson* Q.C., for respondent.—The sole question is, whether the portion of soil occupied by the pipes is "land and heritage," within the meaning of the Statute 8 and 9 Vict., c. 83. The appellants have the sole and exclusive use of the ground displaced by the pipes, and if what they have is not land, at least it is heritage, which is a most comprehensive word, including everything that goes to the heir at law—Bell's Dict. "Heritable." Even the words of their incorporating act §§ 34 and 35 shew, that the soil necessary to be acquired was to vest in the company. It can make no difference that they have no power to sell or to let their portion of the land. That is a mere accident—they are only prevented from doing so by an act of parliament. But heirs of entail, who are prohibited from letting or selling, are not the less assessable as owners and occupiers. We say, therefore, that what the appellants have is land or heritage, in the ordinary sense of those terms. They come also within the statutory definition of the word "owners." It cannot be said that they are not in the receipt of the rents and profits, otherwise these words can have no meaning. It was said that the lands contemplated by the Poor Law Act were those only which were capable of being let, or where there could be both owners and occupiers. That, however, is not the case. Section 37 merely says, that lands might be valued at such a sum as could be got, if they were let to a tenant; it merely points out a mode of arriving at a valuation, and does not indicate what is assessable. Then the other side chiefly rely on the view that what they have is a mere servitude. But it resembles rather the case of a seam of coal lying under the surface of the ground, and the full property in which seam belongs to them. It could not be said, in such a case, that they had only a servitude. They occupy a certain space of ground entirely and exclusively, and no person has a right to it but themselves. All that the pipes occupy belongs to them absolutely, and not in the qualified sense of a servitude.

[LORD CHANCELLOR.—The pipes belong to them certainly. Suppose a person to crawl into the pipe, could the company bring trespass *quare clausum fregit?* That will furnish the true test whether they are owners of land or not.]

We should say they could. We see no difference between their case and that of a proprietor of a stratum of coal lying under the surface. The cases which have occurred in England under the Poor Law Statute of Elizabeth bear out our views. Those already cited, as well as *R.* v. *Brighton Gas Company*, 5 B. & C. 466; *R.* v. *Mersey and Irwell Navigation Company*, 9 B. & C. 112; *R.* v. *Cambridge Gas Company*, 8 A. & E. 73, clearly shew, that what such companies have is land in England, and why should it not be held land also in Scotland? In many of these cases it was also contended, that it was only a servitude, but it was decided otherwise. Now, the only difference between the English Poor Law Act and the Scotch is, that the former visits occupiers alone, while the latter takes in owners also. So that, at all events, the statutes coincide to a certain extent, and where, as in the present case, no distinction can be made between the owner and occupier, the statute must reach both, since it extends to one. The difficulty of assessing the subject is no reason for saying that no rate is leviable—*R.* v. *Mile End Old Town*, 10 Q.B. 208. As to the novelty of the present attempt to assess water pipes, there is nothing to be wondered at, seeing that it is only since 1845 that any rate has been imposed on burghs at all in Scotland; as to which, and the history of poor law assessment in Scotland, see *M'William* v. *Adams*, ante, p. 24: 1 Macq. Ap. 120: 24 Sc. Jur. 391.

Sir F. Thesiger replied.—The other side rely on the English authorities, but the Judges below expressly repudiated these authorities. The Judges say that occupancy *per se* is not enough, and this drives us to look at ownership as the radical criterion; and as all the English cases refer only to occupancy, they rather mislead than furnish an analogy. The other side deny this is a servitude, notwithstanding what Lord Campbell said in *Chelsea Water Works* v. *Bowley*, and they say it is like the case of a seam of coal. But it has been decided in *Wilkinson* v. *Proud*, 11 M. & W. 33, and *Doe d. Hanley* v. *Wood*, 2 B. & Ald. 724, that the right to dig for coal in another man's ground is an incorporeal hereditament, and therefore would not be assessable under the

Statute of Elizabeth. It is no doubt competent to make grants of different parts of the subsoil, but then the rights of the parties would turn entirely on the words of the grants, and I must see these before I can allow the illustration to be good for anything. The cases before cited of *Doe* v. *Archbishop of York*, and *Chelsea Water Works* v. *Bowley*, are clear authorities, that what we have is a mere servitude, and nothing more. We have no right whatever to the soil as owners, we are merely owners of the pipes; and in the case put of a man crawling into the pipe, I deny that we could bring trespass *quare clausum fregit*—we could only bring trespass for injury to the chattel.

LORD CHANCELLOR CRANWORTH.—My Lords, this is an appeal from a decision of the Court of Session. As I am of opinion that the Court below has come to a perfectly correct decision upon the case, I do not think it would be useful or necessary to keep the matter standing over any longer for further consideration. My Lords, it is impossible to deny, that the question is one of some nicety, depending upon the minute construction of the particular words which are used in an act of parliament; those words, perhaps, not being used exactly in the sense which *primâ facie* they might be supposed to bear.

The question of law turns upon the construction which is to be put upon the 34th section of the late Scotch Poor Law Act, the 8th and 9th of Vict., chap. 83. By the 34th section of that act it is enacted, "That when the Parochial Board of any parish or combination shall have resolved to raise by assessment the funds requisite, such board shall, either at the same meeting, or at an adjournment thereof, or at a meeting to be called for the purpose, resolve as to the manner in which the assessment is to be imposed." We know that in this country the assessment is imposed upon the occupiers; but in Scotland the Parochial Board may determine to adopt one of three modes of rating—"and it shall be lawful for any such board to resolve, that one half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination, rateably, according to the annual value of such lands and heritages; or to resolve that one half of such assessment shall be imposed upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance;" "or to resolve that such assessment shall be imposed as an equal per centage upon the annual value of all lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance." The distinction, therefore, or one of the distinctions, between the Scotch and English Poor Law Acts, is this,—that whereas the principle of assessment is conclusively fixed by the legislature in England, it is not conclusively fixed by the legislature in Scotland; but the parishes or unions may settle amongst themselves which of three different forms of rating shall be adopted.

My Lords, the attention of your Lordships has been called to the progress of Scotch legislation upon this subject, which, so far as it is necessary for me to advert to, was this:—The first enactments in Scotland were in the reign of James the Fifth of Scotland (at the time of our Queen Elizabeth), in the year 1579; and by that act, I think, the assessment was obliged to be simply upon the inhabitants according to their means and substance. Then that principle having been extended in the reign of Charles the Second, in 1663 an alteration was made in the rating of landward parishes, or agricultural parishes, exclusively of cities and towns, by which one half was to be charged upon the owners of the land, or the heritors, and the other half upon the inhabitants, according to their means and substance. Then, I think, that act was slightly altered in the reign of William the Third, which it is not important for us to consider; and so the matter remained until this statute was passed, in which, for the first time, there was, expressly, authority given to the parties, if they thought fit to charge the rating wholly upon the lands, under these circumstances, that one half was to be charged to the owner and the other half to the occupier. There were two other modes of rating which it was open to the parish to adopt, and to which I need not advert. In the present case, the parties having met, under the authority of the 34th section, did resolve that the rate should be imposed, one half upon the owners and the other half upon the occupiers; and having come to that resolution, the question is,—Whether the Edinburgh Water Works Company, who have water works whereby they supply the city of Edinburgh with water, and as part of those works have main pipes running along the streets of Edinburgh from which they supply the inhabitants with water, are or are not liable to be rated as owners and occupants? They have been rated as owners and occupants of lands and heritages within the city of Edinburgh. The Court of Session have held that they are liable; from that decision the company has appealed to your Lordships; and the question is,—Whether the Court of Session have decided rightly?—the Court of Session having decided that they are owners and occupiers of lands and heritages, within the meaning of the Scotch Poor Law Act.

Now, my Lords, if this matter had been entirely untouched by decisions either in England or in Ireland, it might have been open to very grave question, whether a party who had merely the right of conveying water by pipes along a street or any land, and so using it for the purpose of conveying water to sell, so to speak, to the houses, for his profit, was or was not in the position

of an owner or occupier of land, within the meaning of the statute. But it is not a new question, because the question has arisen in innumerable instances in this country, upon the true construction of the Statute of Elizabeth, in which the language is general, that the churchwardens and overseers were to meet together to raise a stock, by an equal assessment upon the occupiers of all lands, messuages, and so on, in each parish. The question arose more than half a century ago, whether persons in the position of this Water Works Company were occupiers of lands, within the meaning of the Statute of Elizabeth, and it was very strongly pressed that all they had was what we call in this country an easement, and what in Scotland is called a servitude, namely, the right of conveying water along a channel or pipe of any description, and that they were not occupiers of the land itself. But that point was elaborately argued before the Court of King's Bench in 1808, in the case of *The King* v. *The Corporation of Bath*, (there had been a previous case in which the right was very fully discussed,) and Lord Ellenborough held that, within the meaning of the Statute of Elizabeth, the object of which was to impose an equal rate for the relief of the poor—they were occupiers of land—that the right of placing their pipes along the streets, and conveying their water along those pipes, made them, within the meaning of that statute, the occupiers of land. I allude to that case particularly, but there are a great number of other cases which have followed it.

I believe the only other case to which I need advert is the case of *The King* v. *The Chelsea Water Works Company*, in which Mr. Justice Littledale and Mr. Baron Parkes, then Mr. Justice Parke, in the Court of King's Bench of that day, held, that the Court was quite right in deciding in the former case, and those which had followed, that, within the meaning of the Statute of Elizabeth, a Water Works Company having pipes under the surface, were the occupiers of the lands through which their pipes were conveyed. They held that it made no difference, which was contended to be a difference, that in that case a large portion of the pipes ran under some part of the public parks, in respect of the whole of the surface of which the ranger was actually rated. It was contended that rating the Water Company would make a double rate; but the Court held that that was utterly immaterial, because the ranger was rated in respect of the surface, and the Water Works Company were rated in respect of that portion of the land which they occupied. The Court adhered strictly to the doctrine, which had been laid down in the former case upon the construction of the statute.

Now, it is true that these are English authorities, but we must bear in mind, that the result of these authorities must be supposed to have been known to the legislature when it passed this act relating to Scotland. The result of these authorities I take to be this :—That a company occupying or owning water works, under the circumstances to which I have adverted, are, within the meaning of the law relating to the relief of the poor, the occupiers of the land under which their pipes pass. The legislature must have had the result of these authorities present to its mind, and with that knowledge it enacted, that after the passing of the act 8 and 9 Vict., cap. 83, it shall be lawful for one half of the assessment to be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages. Now, it is to my mind impossible to believe that the legislature could intend that the word "lands" should mean one thing in an act with reference to Scotland, and another thing in an act with reference to England; more particularly, in passing a statute, the object of which was to introduce into Scotland enactments not exactly identical with, but very much analogous to, those which had prevailed in England. The inconvenience of such a state of things would be excessive. I do not mean to say that the same word may not mean a different thing with reference to Scotland, to what it means with reference to England; but here the only question is, whether, in the nature of things, parties conveying their pipes through lands are the occupants of those lands? That question having been decided and acted upon in England for so long a time, and the legislature, with the knowledge of the decision, having enacted, that it shall be lawful to assess, *inter alios*, the occupants of lands in Scotland, I think it must have been understood that the same class of persons who were held to be occupants in England should be occupants in Scotland. That being so, I do not think your Lordships are at all at liberty to rely upon that which has been pointed out as a distinction, and which I think is a great distinction, in favour of the construction which has been put upon the statute by the Court of Session. In the Statute of Elizabeth the parties were obliged to be the occupants of lands, messuages, mines, woods, and a number of enumerated corporeal hereditaments, otherwise they were not liable to be rated. But here that is not so, because the legislature, with respect to Scotland, has said that the rate is to be imposed "upon the tenants or occupants of all lands and heritages." Now, it was pressed upon your Lordships in the argument at the bar, and, I think, very properly, that even if this be an easement, it is an heritage, which I understand to mean a matter of property capable of inheritance. There can be no doubt in the world, that if I grant to another and his heirs the right for ever of conveying water through my land, that is an heritage.

I very much doubt, therefore, whether it is necessary for me to draw your Lordships' attention to any of the constructions which have been put upon the English act, in order to shew that these parties are liable to be rated, although I think they furnish a perfectly conclusive argument.

We must understand the legislature to have used the term "occupants of lands," in the same sense, with reference to the New Poor Law Act which was introduced into Scotland, as that in which it had been used with reference to the Poor Law Act in England. I think upon that ground, independently of the use of the word "heritage," it is quite clear that the decision at which the Court of Session have arrived is perfectly correct.

My Lords, that being so, the whole subject is exhausted except upon this point. It is said that there has been no decision that any person in the position of this Water Company is the owner of land. The word "owner," by the interpretation clause, I understand to mean a party owning, so to say, any interest—it is not confined to the owner of the fee simple. What Sir Frederick Thesiger pressed upon your Lordships is quite right, that it merely means that a tenant for life, or a tenant for years, or any man, in fact, who is possessed of any interest whatever, is to be an owner. Then it is said that no decision can be found which at all points to any person having an interest in pipes under the soil as the owner of that land. I do not feel the force of that argument. It was, no doubt, not necessary to come to any such decision upon the Statute of Elizabeth. The difficulty was not, whether he was an owner and occupier, but whether the right was a right adequately described under the words "occupant of land." When there has been a case decided with regard to occupation, it seems to follow, as of course—with no distinction between the occupier and the owner, the same party having both interests, he being both owner and occupier—that the decision of the point bears upon both ownership and occupation.

My Lords, although I think the decision of the Court of Session was perfectly right, no doubt the very able argument of Lord Moncreiff suggests very considerable doubts upon the subject, and if the matter were newly reasoned over, and if no Statute of Elizabeth had ever passed, I should have felt much weight in the argument of that learned Judge. It would be very dangerous for us to be refining upon a matter of such every day necessity. I think that what we understand to be the law should be acted upon as being the law: the construction of the statute being in conformity with perfect justice, namely, the equal rating of all persons who have a beneficial interest in the works in question for the relief of the poor. I think the decision to which the majority of the learned Judges (four out of five—the Lord Ordinary and three of the Judges of the Court of Session) have come, is conformable to precedent, conformable to principle, and is a decision which your Lordships ought to have no hesitation in affirming. I shall therefore move your Lordships that the decision of the Court below be affirmed with costs.

Interlocutors affirmed with costs.

Appellants' Solicitors, Richardson, Loch, and Maclaurin.—*Respondent's Solicitors*, Dodds and Greig.

FEBRUARY 24, 1854.

ROBERT YOUNG, *Appellant*, *v.* JAMES CUTHBERTSON and OTHERS, *Respondents.*

Highway—Public—Right of Way—Terminus of Way—Evidence—Issue—Bill of Exceptions—*In an action of declarator that there existed a public right of way through the lands of the defender, the Court of Session approved of this issue to try the question:—" Whether, for forty years and upwards prior to the year* 1827, *or for time immemorial, there existed a public right of way for foot passengers from the Kirktown of Burntisland, and harbour and royal burgh of Burntisland, or one or more of them, leading westwards, along or upon the margin of the sea beach, through the defender's lands, to the western extremity thereof, and thence proceeding to Starleyburn port and harbour, and to the port and harbour and old and new villages of Aberdour, or to one or more of them?" On a Bill of Exceptions:*

HELD (affirming judgment)—(1) *That it was sufficient for the pursuers to prove that there existed a public road to Starleyburn, and that it was not necessary to prove that it was a public place; nor, supposing it not to be a public place, what means of exit the public had therefrom to a public place; and* (2) *That in considering what was the road put in issue, the issue alone was to be looked at, and that it was not competent to construe the issue by a reference to the record.*

A public right of way means a right of way from one public place to another public place; but there may also be a public way like a cul de sac *in a town.*[1]

Young brought this case under review of the House of Lords by two appeals, pleading in the first appeal, that the interlocutor of 20th Dec. 1851, disallowing the exceptions to the ruling of

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[1] See previous reports 14 D. 300, 375, 465; 22 Sc. Jur. 152; 23 Sc. Jur. 587, 627; 24 Sc. Jur. 162, 216, 245. S. C. 1 Macq. Ap. 455: 26 Sc. Jur. 310.