contradict the charter-party; on the contrary, it explains it. The import of the parole proof is clearly shown by the Sheriff-Substitute, and I think that his judgment is right. I therefore concur with your Lordship.

LORDS BENHOLME and NEAVES concurred.

The Court pronounced the following interlocutor:—

"Find that the pursuers entered into the charter-party No. 10/1 of process: Find that the vessel was navigated on the voyage by the master and crew as the defenders' servants: Find that the pursuers, as charterers of the ship, agreed with Messrs Couper, Blackwood, & Co. of Glasgow to carry therein on the said voyage 563 boards and 85 deals respectively of red pine, being then 'in good order and well conditioned,' and to deliver them in like good order at Natal, the usual risks of the sea, the act of God, and the Queen's enemies, excepted: Find that the said wood, having been taken on board by the master and others as the defenders' servants, was conveyed to Natal, but that on delivery there a large proportion of it was found to be much damaged, in consequence of having been carried on deck throughout the voyage, and been thereby injured by the weather and heat: Find that the wood in question was so carried on deck with the pursuers' knowledge and consent, and under an agreement between the parties, by which the pursuers undertook the risk of its being so carried: Therefore recall the judgment appealed from: Sustain the defences; assoilzie the defenders from the conclusions of the summons, and find the defenders entitled to expenses both in this and Sheriff-court; remit to the Auditor to tax the same and to report, and decern."

Counsel for Defenders (Appellants)—Watson and Keir. Agents—Webster & Will, S.S.C.

Counsel for Respondents (Pursuers)—Solicitor-General (Clark) and Balfour Agents—J. & R. D. Ross, W.S.

Friday, March 14.

FIRST DIVISION.

MURE *v.* MURE.

Divorce—Evidence—Question inferring Criminality—Right of Witness to decline to answer.

In an action of divorce the pursuer obtained a commission to examine a party resident abroad, with whom the defender was alleged to have committed adultery. The allegation of adultery was founded upon an action of affiliation raised at the instance of the witness proposed to be examined against the present defender some time previous. The defender moved the Court to instruct the commissioner to warn proposed witness that she was not bound to answer the question as to having had sexual intercourse with defender, adultery being a crime in law. The pursuer resisted the motion, on the ground that the witness, having by her own act made public the fact of her intercourse with the defender, was not entitled to the protection of the Court. *Held* that the Judge Ordinary must append to his commission the instruction craved by the defender; and further, if witness elected to answer, and did so in the negative, then questions might be put founded on her deposition in the affiliation case, with a view to testing her credibility.

Friday, March 14.

FIRST DIVISION.

[Lord Jerviswoode, Ordinary.

MATHER *v.* MACBRAIRE AND BERWICK SHIPPING CO.

Salmon-fishing—Medium filum—*Alveus*—*Public River—Damage by Floods.*

In a case where two parties were owners of salmon fishings on opposite sides of a public tidal river, the boundary being the *medium filum* of the stream, and where an alteration in the bed of the river had been caused by unusually heavy floods,—*held* that the one proprietor whose fishery was injured by the alteration was entitled to interfere with the *solum* of the river to the effect of restoring it to its normal condition.

This was an action regarding salmon-fishings in the Tweed. The pursuer, Mr Mather, was owner of the fishings on the English side, Mr Macbraire of those on the Scotch, both of them being within the tidal or public portion of the river, and the *medium filum* being the common boundary. The Berwick Shipping Co. were Mr Macbraire's tenants. Across the *medium filum*, and *ex adverso* of the parties' lands, stretched a gravel bank, forming species of dam across the river, and left partially dry at low tide. This bank, which was about 125 yards long, began close to the English side, and stretched across the river to within about 20 yards of the Scotch side, and it was in the channel between the end of this bank and the Scotch shore that the great volume of water flowed, and consequently up this channel that most of the salmon passed. The method of fishing in use here was by watching, or as it is called "fording" the fish; that is to say when a fish is seen to ascend the channel the net is cast in the still water above, and the fish landed.

The *medium filum* being the boundary of the two fisheries, the proprietor on the Scotch side had obviously a great advantage in having the main channel on his side, and the strongest reason for keeping it there. In 1867, and again in 1871, violent floods occurred, which cut a gap in the gravel bank and so brought the main channel close up to the *medium filum*, thereby greatly increasing Mr Mather's facilities for fording the fish. This gap was on each occasion filled up by the defender, and the course of the river restored to its normal condition; and it was to restrain these operations that the present action was raised.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh*, 30*th November* 1872.—The Lord Ordinary having heard counsel on the proof led and on the whole cause, and made avizandum and considered the same,—Finds, as matter of fact—(1st) That the operations forming the subject of the present action, and which were executed by the defenders in or upon the bank or bed of sand, gravel, and stones described in the record, and forming part of the *alveus*] of the river Tweed, and in or upon other parts of the said *alveus*, were executed upon the north or Scotch side of the *medium filum* of said river, and with relation to the salmon-fishing known as the Scotch New Water Fishing, belonging to the defender Mr Macbraire, and situated *ex adverso* of his lands and estate of Tweedhill: (2d) That at the said salmon-fishing the main body of water now flows, and has for forty years and upwards flowed, along the north or Scotch side of the river: (3d) That the said operations of the defenders had not the effect of diverting the water of the river from its natural or ordinary course, or of changing the same:—(4th) That the said operations were performed for the purpose of repairing the damage caused to the bed of the river by winter floods and floating masses of ice or otherwise, and of restoring the channel to its former state, and so maintaining the said salmon-fishing in a suitable condition for the due and proper use of nets therein, and otherwise for the due exercise of the rights of the defenders in relation to the said fishing; and that said operations did not go beyond reasonable repair to the bed of the river: and (5th) That the defenders and their predecessors have been in use for forty years and upwards, and for the like purpose, to execute operations of the description complained of: Further, and as matter of law, finds that the defenders were and are entitled to execute such operations, and that these are not such as to warrant the interference of the pursuers with the same; therefore assoilzies the defenders from the conclusions of the summons, and decerns; finds the pursuers liable to the defenders in expenses in so far as they have not already been found liable; allows an account thereof of the expenses now found due to be lodged, and remits the same to the Auditor to tax and report.

"*Note.*—The case which the Lord Ordinary has now disposed of is of great importance to the parties directly interested in it, and probably in a more general sense. Its merits have been discussed with much ability and anxiety before the Lord Ordinary, and after the best consideration he could give to the evidence and to the argument, he has embodied his views in the preceding interlocutor, the merits of which will, doubtless, form the subject of further discussion and consideration elsewhere."

Argued for pursuer—The defender has no right or title to interfere with the *alveus* of the river, except for the purpose of protecting his own riparian property. As long as the river keeps within its banks he must not interfere to check the operation of nature, especially when his interference has the effect of depriving the pursuer of an advantage of which he has become legitimately possessed.

Argued for the defender—The pursuer must show that the operations complained of are illegal in themselves, and he must also prove injury; whereas all he contends for here is, that if the defender be restrained from carrying out his operations his own fishery will improve, not that if they are carried out it will be injured. Any owner of a salmon-fishery has a right to maintain it in its normal condition, and to restore it against the results of a sudden change. The opposite fishery owner can only claim not to be put in a worse position than he was before the change.

Authorities—*Bickett* v. *Morris*, May 20, 1864, 2 Macph. 1082, H. L., 4 Macph. 44; *Lindsay* v. *Thompson*, Nov. 15, 1866, 5 Macph. 29; *Jackson's Trs.* v. *Marshall*, July 4, 1872, 9 Scot. Law Rep. 576, 44 Jurist, 506; *Town of Nairne* v. *Brodie*, July 28, 1738, M. 12,779; *Farquharson* v. *Farquharson*, June 25, 1741, M. 12,779; *Town of Aberdeen* v. *Menzies*, Nov. 22. 1748; M. 12,787; *Lord Zetland* v. *Glovers of Perth*, Jan. 31, 1868, 6 Macph. 292; *Milne Home* v. *Smith*, Nov. 23, 1850, 13 D. 112.

At advising—

Lord Deas—The question in the present case involves some elements of novelty, and requires careful consideration. It relates to salmon fisheries in a portion of the river Tweed, at a place where the river is mutually admitted to be a public tidal river. The pursuer Mr Mather is a domiciled Englishman, and the defender Mr Macbraire is a domiciled Scotsman. The pursuer Mr Mather is proprietor of the Watham Salmon-fishery, connected with the English or southern bank, and the defender Mr Macbraire is proprietor of the salmon-fishery on the Scotch or northern side, immediately opposite, connected with his lands of Tweedhill. I understand the *medium filum* to be admittedly the boundary of the two fisheries, as well as of the two countries, recognising the doctrine laid down in the case of *Milne Home* v. *Smith*, Nov. 23, 1850, 13 D. 112—noticed by your Lordship in the chair in the course of the discussion.

Both rights of fishing necessarily flow from Crown grants, and although it would appear that one or other of these grants may have originated before the union of the Crowns, I do not think that this creates any specialty of importance. The two Crowns are now united, and the case is, I think, to be dealt with upon the footing of two grants flowing from the same sovereign power, and giving out rights which in both countries are deemed *inter regalia minora*.

The defender Mr Macbraire is, as I have said, proprietor of the lands of Tweedhill, upon which he draws his nets. The pursuer must, no doubt, have right to draw his nets on the southern side. Allusion is made in the proof to "Mr Mather's land," but it is not averred in the record that he is proprietor of any lands there. This, however, is of no moment, because neither party pretends to be exercising or enforcing any rights as a riparian proprietor. The title and interest asserted on both sides are exclusively the title and interest of proprietors of salmon-fishings in a tidal public river. Neither of them has any property in the *solum* of the river, which remains vested in the Crown. The question between them substantially comes to be, Whether, if a sudden and unusual flood has altered the *solum* or bed of the river upon one side of the *medium filum* in a manner prejudicial to the salmon-fishing upon that side, the party whose fishing is thus injured can be prevented by the other from *de recenti* restoring the *solum* on his own side to the same state in which it was immediately

before the flood? That is what the defender has done, and it is clear, I think, upon the proof, that that is *all* which he has done.

A gravel bank of considerable breadth extends from near the English side for 125 yards or thereby across the river towards the Scotch side, being about three-fourths of the width of the river, and reaches to within 20 yards or thereby of the Scotch side. These are the measurements averred by the pursuers in article 4 of their condescendence, but accuracy or precision as to these measurements is not material to the question at issue. The main body of the water flows within this last-mentioned space, hypothetically assumed to be 20 yards or thereby on the Scotch side; and at low water the salmon can only ascend in this comparatively limited space, so that the defender Mr Macbraire and his tenants have a much better opportunity of watching (or, as it is called, of fording) the fish, and, consequently, of catching them, than they would otherwise have.

It appears that about July or August 1867, and again in August 1871, the defender Mr Macbraire and his tenants performed certain operations on the bed of the river, on their own side of the *medium filum*, by filling in stones and gravel for the purpose and with the effect of filling up gaps in the said bank, which had been caused by unusual floods in the course of each of the two immediately preceding winters respectively, and thereby restoring the bank to the same state it had been in prior to these floods. These are the operations which the pursuer complains of and seeks to have undone. The gaps, while they remained, had the effect of causing the deeper portion of the water, in which the fish prefer to ascend, to flow nearer than formerly to the *medium filum*, and this the pursuer alleges gave him an opportunity, which he had not before, of watching the fish from his side of the *medium filum*, and, consequently, a better opportunity than formerly of securing them.

The pursuer does not say that the operations complained of will or can in any way prevent him from exercising his rights of fishing in precisely the same manner and with the same results as these rights had been exercised for time immemorial prior to the floods in question. What the pursuer complains of is not any injury or possible injury, but that he is deprived of a benefit which had resulted to him from the floods. His argument is, that whatever changes occur upon the *alveus* of the river from the floods, however unusual, or from any other accidental cause, the parties must accept the benefit or injury, as the case may be, to their respective fisheries resulting from these changes, and can lawfully do nothing to restore themselves against these results so long as the river continues to flow within the same banks as formerly.

The immemorial usage of proprietors and tenants of salmon-fisheries in the river has certainly been adverse to this contention. The pursuer's witnesses no doubt say that any operations they have known to be performed on the bed of the Tweed have always been confined to the space over which the nets are drawn in bringing the fish to the shore, and consisted in smoothing that ground and filling up holes which would otherwise have enabled the fish to escape out of the nets. But of these witnesses the three last only are of considerable age, and speak to a period of from 40 to 50 years. The others, so far as their ages are mentioned, are all comparatively young men, and have had very short experience. Besides, the evidence of all the pursuer's witnesses is, upon this point, merely negative, and cannot be regarded as contradictory to the positive evidence of the defender's witnesses, nine of whom are persons of from 60 to 72 years of age, and speak to periods of from 40 to 60 years, during all which time they say it consists with their own knowledge that the invariable custom on the Tweed has been for the proprietors and tenants of the salmon-fisheries to restore the bed of the river against all important changes, such as occurred in the two winters which respectively preceded the defender's operations of 1867 and 1871, and this in a manner precisely similar to that which the defender adopted in these years. Two other witnesses for the defender give evidence to the same effect, applicable to their shorter experience, the one of 20 years and the other of 30 years prior to this action. All of these witnesses expressly state that the operations so habitually performed were not limited to the space over which the nets had to be drawn towards the shore, but were performed wherever they were required for the restoration of the bed of the river. The witnesses on both sides at the same time agree that if the defenders had not performed the operations complained of, or some equally effectual operations, the result would have been that the main body of the water would very soon have come to be established permanently much nearer the *medium filum* than it has ever hitherto been, to the great depreciation and detriment of the defenders' fishery, and to an extent greatly disproportionate to any benefit resulting to the pursuer's fishery.

Taking the case, then, upon the above footing, I apply the law to it thus—

First, I construe the original grant in favour of each of the grantees as a grant of salmon-fishery in the river in its then normal state, implying a right to each to keep the *solum* of his own fishery so far as practicable in that same state.

Second, It being proved that for time immemorial the *solum* of the defenders' fishery has been maintained and enjoyed in the same state in which it was immediately before the floods in question, and to which state the defenders *de recenti* restored it, I hold that this state must be presumed to have been its normal condition at the date of the original grant, and, consequently, to have been the state in which the grantee obtained right to preserve and enjoy it.

The *solum* of the river remains, as I have said, the property of the Crown, but an interest in that *solum* was necessarily implied in the Crown grant of a salmon-fishery. Even the Crown, I rather suppose, could not thereafter, by mining or otherwise, have taken away that *solum*, and so have destroyed the subject of its own grant, any more than it could have taken away or destroyed the banks, if these had been the property of the Crown. The existence of the *solum* is as essential to keep the water in its place as the existence of the banks. The *solum* may be called the floor of the fishery. Without that floor there could be no water, and without the water there could be no fishery. Although the Crown did not part with the property of the floor, nor become bound to maintain it, an interest in the floor of his own fishery, and a right to maintain it at his own expense, was, I think, beyond all doubt conferred on the grantee of the one fishery, in a question with the grantee of the other.

If this be so, it may fairly be held to follow that the Crown grants likewise implied a right to each grantee to prevent the other from injuriously altering the *solum* on his own side of the *medium filum*. That deduction from the argument is not, however, necessary to enable the defenders to stand upon the defensive. It is rather a position assumed by the pursuers; for the very foundation of their action is, and must be, that Mr Mather's right of fishery implies a common interest in the *solum* of Mr Macbraire's fishery, which entitles Mr Mather to complain of Mr Macbraire's operations, although these are entirely on the *solum* of his own fishery.

The same interest I have been speaking of as an interest in the *solum* may, for the purposes of the present case, be equally intelligibly described as an interest in the course of the main body of the water. For it is abundantly proved on both sides that the main body of the water has immemorially flowed on the north or Scotch side of the *alveus*, and that but for the defenders' operations it would have become permanently established at a much greater distance from that side. An interest in this change is the very interest which the pursuers seek to vindicate, and the law they contend for is, as I have already said, that so long as the river keeps within its banks neither party is entitled either to prevent the shifting of the main current or to bring it back if it has recently shifted. I know of no principle or authority for that alleged law. It would operate very unfairly upon tenants of salmon-fishings holding leases for a term of years, as well as upon proprietors. For instance, the rent of the pursuers' fishery is only £54 a-year, while the rent of the defender's fishery is £300 a-year. No tenant, I should think, would engage to pay this rent for the defender's fishery for a term of years on the footing that nothing could lawfully be done to keep the main body of the stream from deserting its immemorial course, on which the chief value of the fishery depends. Such a law would go far to prevent leases of salmon-fisheries for a period of years from being entered into at all.

I can find nothing in any of the cases referred to in the discussion adverse to the principle on which I think this case falls to be decided. The case of *Menzies* v. *The Marquis of Breadalbane*, H. of L., 3 W. and S. 235, involved no question of salmon-fishings. It was a case between riparian proprietors upon opposite banks of the Tay, at a part of the river which, so far as appears, was neither tidal nor public; and what was held was that the one proprietor was not entitled to build a bulwark, although mainly on his own ground, across an old channel of the river, which still remained the only course by which the surplus water of periodically recurring winter floods could get away without overflowing miles of flat land belonging to the other proprietor. The House of Lords directed the interlocutor of the Court below to be so far varied as to limit the interdict to the erection of "any bulwark or any other *opus manufactum* upon the banks of the river Tay which may have the effect of diverting the stream of the river in times of flood from its accustomed course, and throwing the same upon the lands of the appellant." But this was upon the footing that, besides the ordinary channel, there existed also a regular flood channel. Accordingly, the Lord Chancellor, while observing that the ordinary course of the river was that which it took in ordinary times, farther observed—"There is also a flood channel. I am not talking of that which takes place in extraordinary or accidental floods, but the ordinary course of the river in the different seasons of the year must, I apprehend, be subject to the same principle." And again, he observed that the apparently conflicting passages on the subject in the Roman Digest might probably be reconciled by attending to the distinction between the usual course of the river at different seasons of the year and "accidental and extraordinary casualties from the flood suddenly bursting forth, and they" (that is, the apparently conflicting passages) "go to this, that in such a case the parties may, even to the prejudice of their neighbours, for the sake of self-preservation, guard themselves against the consequences."

It is obvious that there is nothing in these views adverse to the defenders in the present case, but rather the reverse. There is not alleged to have been any habitual winter channel in the Tweed, from which the water has been excluded by the defenders' operations. The floods, against the consequences of which the defenders have restored themselves, are not said to have been other than extraordinary and accidental floods, which altered the normal state of the *alveus* of the river.

In a subsequent part of the same opinion, the Lord Chancellor explains the case of *Farquharson of Invercauld*, in 1741, as to embanking upon the Dee, by attributing importance to the custom of that part of the country—a view which rather favours than otherwise the recognition of the custom of the Tweed as important in the present case, although the question here is between two proprietors of salmon-fisheries in a public river, and not, as in the *Invercauld* case, between two riparian proprietors in a private stream.

The case of *Bickett* v. *Morris*, decided in the House of Lords 13th July 1866, 4 Macph. H. of L. p. 44, and 1 Law Rep. Scotch App. p. 47,—cited for the pursuers, has no application here. It was not pretended that the newly erected wall of the house, which in that case encroached on the *alveus* of the stream, was intended either to restore the stream to its usual course or to keep it within that course. On the contrary, the objection which was sustained was, that although the encroachment was slight, it could not with any certainty be predicted that it might not to some extent alter the usual course of the stream.

On the other hand, the case of *The Town of Nairn* v. *Brodie*, July 28, 1738, M. 12,779, seems to be strongly corroborative of the principle on which I am disposed to decide the present case. That case related to a public tidal river, namely, the river Nairn, at and shortly before its junction with the sea. The Town had a stell-fishing at the mouth of the river. A sudden speat or flood changed its course; and it was held that the Town was entitled to build a bulwark to bring the river back to its usual course. The case, of *Straiton* v. *Fullarton*, December 1752, M. 12,797, mentioned by your Lordship in the chair in the course of the argument, would seem to imply that if the river could not be restored to the course it had deserted, the proprietor of the fishery would be entitled to follow his fishery—which equally implies a right to enjoy that fishery as formerly, so far as practicable, although that is a sort of case which it is unnecessary to discuss here.

It is of no moment to the authority of the decision in the case of *The Town of Nairn* what the

nature of a stell-fishing was. It is enough that it was a legal mode of fishing for salmon, till struck at by the prohibition in the statute 20 and 21 Vict., c. 148, § 2. It had been immemorially practised, in different ways, in different parts of the country, generally by rowing out into the stream, as in the case of net and coble, but with this important difference,—that the farther end of the net was either fastened by an anchor in the river, or held by a man in a boat, till the fish were seen or felt to strike the net, which was then immediately carried round them, and drawn to the shore. Its deadly character accounts for its abolition; and I mention its nature for explanation merely.

The case of the *Mags. of Aberdeen* v. *Menzies of Pitfoddel*, 22d November 1748 (M. 12,787), is in no way inconsistent with the case of the *Town of Nairn*. For the ground upon which Menzies was held not entitled to restore the channel of the stream, so as to recover his fishing, was that, although he might have done this *de recenti*, he could not do it after having acquiesced in the change for upwards of twenty years.

My opinion, upon the whole, is that the defender Mr Macbraire was entitled to keep the *solum* of his fishery, or, what comes practically to the same thing, the main flow of the water, in the normal condition in which the same had existed from time immemorial before the accidental and unusual floods in question; and that, as he and his tenants did nothing more than restore the *solum* and flow of the water to that normal condition, they have been rightly assoilzied from the conclusions of this action.

The Court pronounced the following interlocutor:—

"Adhere to the interlocutor, and repel the reclaiming note: Find the pursuers liable in additional expenses, and remit to the Auditor to tax the account or accounts of paid expenses, and to report."

Counsel for Pursuer—Watson, and R. Johnstone. Agents—Hope & Mackay, W.S.

Counsel for Defender, Macbraire — Solicitor-General (Clark), and Macdonald. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders, Berwick Shipping Co.—Trayner. Agent—E. Wallace, W.S.

Friday, March 14.

FIRST DIVISION.

[Sheriff of Dumfriesshire.

STOBBS *v.* CAVEN.

Thirlage — Servitude — Sheriff-Court Act, 1 *and* 2 *Vict. cap.* 119 *sec.* 15—*Jurisdiction—Heritable Right—Relevancy—Decreet Arbitral—Usage.*

The tenant of a mill brought an action in the Sheriff-Court against the owner of lands which were thirled to the mill, concluding for payment of the value of abstracted multures, and the Sheriff on appeal dismissed the action as incompetent, on the ground that it raised a question of heritable right. *Held* (1) that the action was competent in the Sheriff-Court, under the Act 1 and 2 Vict. cap. 119, sec. 15; (2) that a decreet arbitral pronounced in 1787 was good evidence of usage to the effect of proving the wider astriction.

This was an appeal by James Stobbs, tacksman of the mill of Snaid, against a judgment of the Sheriff of Dumfries (Napier), in an action raised by Stobbs against Thomas Caven, proprietor of the lands of Birkshaw, in which he concluded for payment of a sum of £25, being the value of multures said to have been abstracted by the defender. The latter denied his liability, on the ground that his lands were only astricted so far as his grindable corns were concerned, and not the whole growing corns. There was also raised against him a supplementary action, to which he made the preliminary defence that the action was incompetent in the Sheriff-Court in respect that it involved a question of heritable right.

These actions were conjoined, and the Sheriff-Substitute (Hope) pronounced the following interlocutor:—

"*Dumfries, 12th July* 1872.—Having considered the proofs for both parties, and whole process, in the conjoined actions, and debate thereon: Sustains the objection taken by the defender in the course of the examination of James Johnston, a witness for the pursuer, and holds the answer to the question objected to as deleted from the proof: Finds, as matter of fact—1. That the pursuer is tenant under the 'Society in Scotland for propagating Christian Knowledge' of *inter alia*, 'All and whole the Mill of Snaid, and kiln belonging thereto, with the mill lands, multures, knaveship, and sequels, house, offices, and cottages of the same,' situated in the parish of Glencairn, for the term of 19 years from Whitsunday 1866, conform to tack, No. 3-1 of process: 2. That the said Society is heritable proprietor of the said mill, mill lands, multures, &c., by virtue of disposition in its favour by Robert Riddell, Esq. of Glenriddle, dated and registered 16th May 1792, with infeftment and Crown charter of confirmation following thereupon: 3. That the defender is heritable proprietor (1) of the lands of Birkshaw, Crossfield, and Cairnbank; (2) of the lands called Moatland, both of said properties being parts of 'the two merk land of Birkshaw, of old extent, and teinds thereof lying in the barony of Snaid, parish of Glencairn, and shire of Dumfries,' conform to titles produced in process: 4. That the said lands of Birkshaw, Crossfield, and Cairnbank, are held from the superior, *inter alia*, on the condition of the vassal, his heirs, and assignees, and their tenants, 'grinding their whole grindable corns growing on the said lands (excepting teind and seed corn) at the mill of Snaid, and paying multures and other services, conform to use and wont:' 5. That the said lands of Moatland are held on a similar tenure, except that the exemption from paying multures is as regards 'teind and horse corn:' 6. That the said mill of Snaid is a barony mill: 7. That in the year 1784, in consequence of 'questions and differences' having arisen relative to the astriction of the above mentioned and of other lands to the said mill, a submission was entered into between Walter Riddell, Esq. of Glenriddle, and Robert Riddell, his son, the proprietors, and William Brown, the tenant of said mill, on the one part, and sundry persons, including the defender's author, and the then superior of the lands in question, Sir Robert Laurie, on the other part, whereby the said questions, along with a process of abstracted multures before the Sheriff of Dumfries, and a process of declarator of