

Railway Company [July 18, 1874], 1 R. 1213, whereas I dissented from that judgment, and very much on the grounds stated by Lord Blackburn in the opinion I have referred to. I am not aware that I have ever adopted the opinion of Lord President Hope in the case of *Heriot's Hospital v. Cockburn*, 2 W. & S. 802, nor am I aware that I have ever entertained or expressed any opinion inconsistent with the decision in *Hislop's* case.

I may further say that I am authorised by Lord Mure to state that his Lordship concurs in the judgment.

The Court refused the appeal and affirmed the judgment of the Dean of Guild.

Counsel for Petitioner—D.-F. Balfour, Q.C.
—Low. Agents—Cumming & Duff, S.S.C.

Counsel for Respondents—Asher, Q.C.—
Jameson. Agents—Mill & Bonar, W.S.

Wednesday, March 3.

SECOND DIVISION.

PRINGLE'S TRUSTEES v. FERGUSSON (RITCHIE'S EXECUTOR) AND ANOTHER.

Husband and Wife—Marriage-Contract—Succession—Jus mariti—Transmissible Right.

In an antenuptial marriage-contract (which did not exclude the *jus mariti*), the wife conveyed to her husband "all debts and sums of money whatsoever presently pertaining and belonging to her, or which may fall to her during the subsistence of the said marriage." During the subsistence of the marriage the wife became entitled under an English will to an interest in expectancy in a sum of money, which interest was by English law not vested till the occurrence of a contingency which did not happen during the subsistence of the marriage, but was till that event a transmissible contingent interest capable of passing to representatives and assignees. The husband predeceased leaving a will, and the wife, after surviving the occurrence of the contingency contemplated, also died leaving a will. In a question between her representatives and her husband's, held that the interest was a "sum of money" in the sense of the contract, and therefore was carried by the assignment therein contained, and *separatim* fell under the *jus mariti* of the husband, and so in either view formed part of the husband's estate.

Miss Catherine Fergusson, one of the daughters of Sir James Fergusson of Kilkerran, married Mr Henry Ritchie of Busbie and Cloncaird in January 1838. An antenuptial contract of marriage was entered into dated 16th January 1838. By this contract she *inter alia* assigned, conveyed, and made over to Henry Ritchie, her promised spouse, and his heirs and assignees whomsoever, "all debts and sums of money whatsoever presently pertaining and belonging to her, or which may fall to her during the subsistence of the marriage, with the securities therefor." There was no exclusion of Mr Ritchie's *jus mariti*.

Miss Henrietta Grant of Clifton, who was one

of three sisters who were joint proprietresses of the Holcombe-Barton estate, in the county of Devon, died on 30th September 1840. She left a last will and testament dated 19th May 1832. By this will she gave and devised to trustees therein named all real estate that she was possessed of in the island of Grenada and in Great Britain for certain purposes—first, that they were to hold the same for the use of her sister Anne Grant and her assigns for and during the term of her natural life, and without impeachment of or for any manner of waste; on her decease, then for the use of another sister Mrs Catherine Grant or Anderson, then married to Mr Anderson; on the death of the survivor of them, for the use of her daughter (Mrs Anderson's daughter) Mary Anderson and her assigns, for the term of her natural life. On the death of the last survivor of these the property was to be held for the use of Mary Anderson's children, if she should marry and have issue. But if Miss Anderson should not marry, or if she should marry and have no issue, then the trustees were, by mortgage and sale thereof, or in some other competent way, to raise, levy, and borrow the sum of £4000, and divide the same equally among the four daughters of Sir James Fergusson of Kilkerran, Bart. The names of his four daughters were Anne, Jane, Catherine, and Mary.

Miss Anne Grant died on 4th November 1840. She also left a last will and testament of the same date, and in similar terms to that of her sister Miss Henrietta Grant. She also directed that in case Mary Anderson should die without leaving issue the trustees were to raise £4000 and divide it equally among Sir James Fergusson's daughters. On the death of her sisters Mrs Catherine Grant or Anderson became entitled to the life-ferent of these two-third shares. On her death in 1856 her daughter Mary Anderson became entitled absolutely to one-third share of the Holcome-Barton estate and to the life-ferent of the remaining two-thirds thereof. Mary Anderson married Mr David Pringle on 2d June 1858.

Mr Ritchie died on 6th November 1843. He left a trust-disposition and settlement dated 23d May 1828, and recorded in the Books of Council and Session on 18th November 1843. By this settlement he left all moveable and heritable estate which should belong to him at the time of his death to trustees for the purpose of dividing it among his nephews and nieces.

On 13th May 1864 an indenture of agreement was entered into between Mrs Pringle, Mrs Ritchie, and the then surviving trustees of Mr Ritchie, and David Pringle, Colonel afterwards General Walker, now dead, and Frederick Pitman, W.S., as trustees for the purposes therein mentioned. This agreement proceeded upon a narrative that Mrs Pringle was born on the 19th day of October 1809; that she had had no issue, and that it was highly improbable that any issue would be born, and in that case the parties to the said agreement were the only persons interested in the Holcombe-Barton estate; that they were desirous that the estate should be sold; that one-third of the proceeds of the sale were to be paid to Mrs Pringle; and that £8000 (part of the remaining two-thirds, being the two sums of £4000 which the Misses Grant directed in the foresaid event of Mary Anderson, Mrs Pringle, having no children, to be raised) should be invested for payment of the income to Mrs Pringle

for her life, and after her death to the daughters of Sir James Fergusson. The estate was accordingly sold, and in the year 1866 the sum of £8000 was paid over to the trustees under the agreement to be held for the purposes mentioned therein.

The trustees under Mr Henry Ritchie's disposition and settlement, who were parties to the said agreement, died without assuming any new trustees, and on 4th April 1885 Mr C. W. W. Thomson, C.A., was appointed judicial factor upon his trust-estate.

Mrs Pringle died on 26th October 1884 without issue. Mrs Ritchie died on 14th September 1885. By her last will and testament she appointed Hew Dalrymple Hamilton Fergusson to be her executor. As executor Mr Fergusson claimed one-fourth part of the two sums of £4000 left by the Misses Grant to be raised from their real estate and divided among the four daughters of Sir James Fergusson. Mr Thomson, however, claimed that this sum fell under Mr Ritchie's trust, as it had been conveyed to him by the assignation in his antenuptial contract.

In these circumstances a Special Case was submitted for the opinion of the Court. The trustees under the agreement of 1866 were the first parties. Mr Fergusson (as Mrs Ritchie's executor) and Mr Thomson (as judicial factor on Mr Ritchie's estate) were respectively of the second and third parts.

The parties were "agreed that according to the law of England the said provisions of £4000 to the daughters of Sir James Fergusson did not become a vested interest (in the language of the English law) until the death of Mrs Pringle without issue, but were until that event a transmissible contingent interest, and that if any daughter of Sir James Fergusson had predeceased Mrs Pringle the interest of such daughter in the said provisions would not have lapsed, but would have passed to her personal representatives or assignees, who would have taken subject to the contingency of Mrs Pringle leaving issue."

The second party maintained that Mrs Ritchie was absolutely entitled to the one-fourth of the two sums of £4000 each bequeathed by Miss Henrietta and Miss Anne Grant to the four daughters of Sir James Fergusson, because (1) at the date and during the subsistence of the marriage her interest was contingent on Mrs Pringle's dying without issue, and that it was not a "debt or sum of money" belonging to her at the time of or falling to her during the marriage, and therefore did not fall under the assignation in her marriage-contract; (2) that not having vested in her, but being subject to a contingency till Mrs Pringle died in 1884, it did not fall under the *jus mariti* of Mr Ritchie.

The third party maintained that the sums in question formed a "debt or sum of money" belonging to Mrs Ritchie at the date of her marriage, or falling to her during it, and thus fell under her conveyance in her marriage contract, or otherwise had passed to Mr Ritchie *jure mariti*.

The question of law for the opinion of the Court was—"Whether Mrs Ritchie's right to one-fourth part of the said two sums of £4000 was conveyed to the said Henry Ritchie by the said contract of marriage entered into between him and the said Mrs Ritchie, or passed to him *jure mariti* and formed part of his estate at the time of his death?"

The second parties (whose argument is fully stated above) referred to these authorities—*Bell v. Cheape*, May 21, 1845, 7 D. 614; *Wight v. Brown*, January 27, 1849, 11 D. 459; *Muirhead v. Lindsay*, December 6, 1867, 6 Macph. 95; *Smith v. Kerr and Smith*, June 5, 1869, 7 Macph. 863; *Fotheringham*, February 7, 1693, M. 5764.

Argued for the parties of the third part—The legacies in dispute formed "a debt or sum of money" which under the English law, which governed this case, had become vested in Mrs Ritchie, or at least was transmissible by her immediately on the death of the testators, the two Misses Grant. By her antenuptial contract all such sums were transmitted to her husband and fell to his estate. Even if this sum did not pass under the assignation in the marriage-contract, it passed to him *jure mariti*, and therefore was payable to the judicial factor on his trust-estate.

Authorities—*Mein v. M'Call*, June 7, 1844, 6 D. 1112; *Nelson v. Rodger*, December 24, 1853, 16 D. 325; *Swinton v. Hamilton and Pringle*, March 15, 1872, 10 Macph. 621.

At advising—

LORD JUSTICE-CLERK—The facts on which the questions submitted to us in this Special Case depend are very clearly and fully set out in the case itself. They may be shortly summarised as follows—Catherine Fergusson, who was one of the daughters of Sir James Fergusson of Kilkerran, married Henry Ritchie in January 1838. An antenuptial contract of marriage was executed by them on the operation of the provisions of which the solution of the present questions partly depends.

The marriage was dissolved by the death of Henry Ritchie in 1843. Catherine Fergusson survived until the 14th of September 1885.

Under the will of Miss Henrietta Grant of Clifton, her sisters Anne and Catherine Grant had an interest for life in a certain estate called the Holcombe-Barton estate, and after the decease of the survivor of them, then Mary Anderson, their niece, for her life, and thereafter to her children should she have any, but if not, then her trustees were directed to raise, levy, or borrow and take up at interest the full sum of £4000, and to divide the same among the four daughters of Sir James Fergusson of Kilkerran.

A similar settlement in the same terms was made by Miss Anne Grant, also a co-proprietrix of the Holcombe-Barton estate, in 1840, in favour of the same trustees, wherein they were directed to divide another sum of £4000 among the same persons on the same contingencies occurring. These deeds were in the English form.

Mary Anderson married David Pringle, and died in October 1884 without having had any children.

The Holcombe-Barton estate was sold in 1863 by mutual agreement, and the two sums of £4000 referred to in the case are part of the price.

Thus the questions that we have to resolve are—First, whether the marriage-contract between Mr and Mrs Ritchie carried this right in expectancy? and secondly, whether if the marriage-contract did not assign it, the implied assignation of marriage will carry it *jure mariti* to the husband. If either of these two grounds are sufficient, this right or interest passed to the representatives of the husband; if not, it will go to those of the wife. In the present case we are not concerned

to inquire into the nature of this right in expectancy by the law of England, for we have that stated as a fact in the 10th article of the case:—“The parties hereto are agreed, that according to the law of England the said provisions of £4000 to the daughters of Sir James Fergusson did not become a vested interest (in the language of the English law) until the death of Mrs Pringle without issue, but were until that event a transmissible contingent interest; and that if any daughter of Sir James Fergusson had predeceased Mrs Pringle, the interest of such daughter in the said provisions would not have lapsed, but would have passed to her personal representatives or assignees, who would have taken subject to the contingency of Mrs Pringle leaving issue.”

Thus, while these two provisions of £4000 did not vest by the law of England until the death of Mr Pringle without issue, they were transmissible (though contingent) interests which could be assigned, and which in default of assignation or conveyance would fall to the representatives of Mrs Ritchie. Therefore if by the terms of the marriage-contract between Mr and Mrs Pringle such an interest—being assignable—would have been conveyed, then the assignee would have all the rights of the cedent, and his representatives or assignees would have the same. Therefore the eventual or expectant element in this assignable right did not prevent its being transmissible. It might indeed be defeated if Mrs Pringle had children, but that would be a divestiture of a right of which Miss Fergusson had the power of assignation.

I shall consider, first, whether under the terms of the contract of marriage between Mr and Mrs Ritchie this right was effectually assigned. The words of assignation are these—She “assigns, conveys, and makes over to and in favour of the said Henry Ritchie, her promised spouse, and his heirs and assignees whomsoever, all debts and sums of money whatsoever presently pertaining and belonging to her, or which may fall to her during the subsistence of the marriage, with the securities therefor.” There are two views maintained in opposition to these assigning words covering this right in expectancy.

It is said, in the first place, that the marriage-contract only assigns to the husband debts and sums of money. But the interest which we have thus seen to be assignable and transmissible related solely to sums of money. It related to two sums of £4000 each, and to nothing else, and therefore these were sums of money to which the wife had right in expectancy, and which therefore properly fell under the description or definition contained in the marriage-contract.

But it is said, in the second place, that these sums of money did not pertain or belong to the wife at the date of the marriage-contract. But it is plain that the right in expectancy did pertain to the wife to the effect of enabling her to deal with it by assignation, and that I apprehend is all which it is necessary should be shown. If it was a right which was assignable, then the character of that right must be governed by the nature of the thing to which it relates, and as that thing is nothing but a sum of money, she had an assignable right in regard to, or in relation to, a sum of money, and that right pertained and belonged to her, and could only be defeated by an eventuality which did not occur.

I should be disposed to read these words as

covering generally the wife's personal estate, and whether these rights to debts or sums of money were perfect or incomplete would be of no moment provided the nature of the thing itself which was the subject of the assignation was one that could be validly assigned.

By the law of England it could be validly assigned, and therefore I think that the clause in the marriage-contract was effectual to assign it.

No doubt according to our own law these results might not have ensued exactly as we have been instructed they would have done by the law of England. Probably we might have found on one hand that this right in expectancy did vest, subject to divestiture, if the event in question happened. On the other hand, if we had found that it did not vest by the law of Scotland, it was not assignable by the wife until the condition was purified. But such is not the law of this case, and we must take it as it has been presented.

But supposing this were not so, and that the marriage-contract did not carry the right in question, did it fall under the legal assignation of marriage by the law of Scotland? On this head also I am inclined to think that it did. It was a personal right. It was assignable, and being assignable I think the marriage assigned it. Nor can I see any reason for holding that any other effect can take place. No doubt we were referred to questions upon the *communio bonorum*, and to some well-known cases arising out of policies of assurance, particularly the case of *Wight* [*sup. cit.*] and the case of *Muirhead* [*sup. cit.*] on this subject. The extent of the legal assignation of marriage is not measured by that of the *communio bonorum*, which is a principle governed by many specialities.

The case of *Wight* was decided upon the principle that the policy of insurance on the life of the wife could not enter into enjoyment during the existence of the marriage, and was therefore not available *ad sustinenda onera matrimonii*. It does not seem to me that any of the principles which were recognised in the case of *Wight*, which in itself was very keenly and acutely canvassed in some of the succeeding cases, are applicable here.

This is a simple personal right to a sum of money which might or might not become available during the existence of the marriage or before its solution.

In that respect it differed entirely from the policy of insurance, which could only become available after the marriage had been dissolved by the death of one of the spouses.

Therefore on the whole matter, without going into the long series of cases which have occurred upon this head of our law, many of them cases of great difficulty and subtlety, I think that this right in expectancy was a personal right which the assignation implied in marriage would carry to the husband, and which would fall under the *jus mariti*.

LORD YOUNG—I am of the same opinion. The view which I take of the case, which substantially agrees with that of your Lordship, I may state in a few words. If Miss Grant's will had been a Scottish instrument, the provision in question would not have vested in Mrs Ritchie in any sense. By our law a subject which has not vested, or a right which has not vested, is not

transmissible. But we are informed that by the law of the country where that will was made, the provision, although it did not become vested until the death of Mrs Pringle without issue, was nevertheless from the death of the testator a transmissible interest. Now, I must take the law of this deed to be the law that governs the rights given by it, and the right given by it to Mrs Ritchie was a right transmissible by her before it vested—transmissible by her subject to the contingency—so that if she left a will and died it would go according to the will upon the contingency being purified or satisfied, while after her death, or if she died intestate, it would pass according to the law of her succession as a right in her—and a transmissible right in her—at the time of her death. That would all have been quite different had the law of Scotland governed the rights given by that English will. But it does not, and the parties have told us that the law which does govern the matter is as stated in article 10 of the case, where it is said—“The parties hereto are agreed that according to the law of England the said provisions of £4000 to the daughters of Sir James Fergusson did not become a vested interest (in the language of the English law) until the death of Mrs Pringle without issue, but were until that event a transmissible contingent interest, and that if any daughter of Sir James Fergusson had predeceased Mrs Pringle, the interest of such daughter in the said provisions would not have lapsed, but would have passed to her personal representatives or assignees, who would have taken subject to the contingency of Mrs Pringle leaving issue.” The result is that at the date of Mrs Ritchie's marriage this right was in her, not vested, because it was subject to a contingency which had not then been satisfied, but nevertheless transmissible. Now, had she married without any marriage-contract, I think the *jus mariti*, her marriage being in Scotland, would have carried it. I do not think that doubtful. It is a personal estate, and the *jus mariti* by our law operated an assignation to the husband of all the wife's personal estate, including her personal rights, which are part of her estate. “Transmissible”—that means assignable; and the marriage was just, in the absence of a contract to the contrary, a transmission of the wife's personal estate to the husband. There is a marriage-contract, but the *jus mariti* is not renounced by it, and therefore if my view be right about the *jus mariti* transferring to the husband every assignable or transmissible right in his wife at the date of the marriage, it is unnecessary to consider whether the language of the marriage-contract operates the same result. But if it were necessary to consider that, I am of opinion with your Lordship that the language of the marriage-contract, properly construed according to the intent and meaning of the parties as we collect it from the whole deed, was just to transfer to the husband every personal right—all personal estate which she was then capable of transferring. And as to the estate now in question, my opinion is that that was its condition—she was capable of transferring it in the same way.

I therefore agree in the answer which your Lordship proposes to give to this question, and in the grounds generally which your Lordship has assigned for the judgment.

LORD CRAIGHILL—The facts of the case in the decision of which I concur with your Lordship are shortly these—Mrs Catherine Fergusson or Ritchie was married to Mr Ritchie in 1838, and there was a marriage-contract by which she, with consent of her father, assigned, conveyed, and made over to and in favour of her promised spouse, and his heirs and assignees whomsoever, “all debts and sums of money whatsoever presently pertaining and belonging to her, or which may fall to her during the subsistence of the marriage, with the securities therefor.” In 1840 the ladies by whom the fund in question was bequeathed died leaving the settlements, the import of which, so far as necessary, is set forth in the Special Case, and the legal effect of which, so far as Mrs Ritchie and the three daughters of Sir James Fergusson of Kilkerran are concerned, parties are agreed is as set forth in article 10, where it is said that “according to the law of England the said provisions of £4000 to the daughters of Sir James Fergusson did not become a vested interest (in the language of the English law) until the death of Mrs Pringle without issue, but were until that event a transmissible contingent interest, and that if any daughter of Sir James Fergusson had predeceased Mrs Pringle, the interest of such daughter in the said provisions would not have lapsed, but would have passed to her personal representatives or assignees, who would have taken subject to the contingency of Mrs Pringle leaving issue.”

Mr Ritchie died in 1843. Mary Anderson, the liferentrix of the estate out of which the £8000 was to be taken in case she should marry and there should be no issue of any such marriage, married Mr Pringle in 1858, and she survived till 1884. There never was issue of this marriage, and on her death the contingency was purified. Mrs Catherine Fergusson or Ritchie, whose share of the £8000 is now in dispute, died in 1885. We are now asked to say “whether Mrs Ritchie's right to a fourth part of the said two sums of £4000 was conveyed to the said Henry Ritchie by the said contract of marriage entered into between him and the said Mrs Ritchie, or passed to him *jure mariti*, and formed part of his estate at the time of his death.”

The English deed, the parties are agreed, must be interpreted according to English law, and its effect has been determined by the opinion of counsel learned in that law. The result, shortly stated, is, that the interest of Mrs Ritchie, though it did not become a vested interest until the death of Mrs Pringle without issue, was until that event a transmissible contingent interest which might be assigned by Mrs Ritchie, and which, should she not assign it, would pass to her personal representatives subject to the contingency of Mrs Pringle having issue. Now, the question we have really to determine concerns the marriage-contract between Mr and Mrs Ritchie, which was a Scottish deed, because with regard to the measure and character of the right of Mrs Pringle, that has to be and has been determined by counsel learned in the English law. And what we are asked to proceed upon is this, that that interest was not a vested interest by the law of England, but was a transmissible interest, an interest that could be assigned, and which if not assigned would fall in the event of Mrs Pringle's death, before the purifying of the condition to her

[Mrs Ritchie's] personal representatives. Now, the marriage-contract conveyed to the husband and wife all debts and sums of money pertaining or belonging to Mrs Pringle at the time of her death, or which should fall to her during the existence of it. I concur with your Lordship in thinking that no difficulty whatever is created by the mere use of the words "all debts and sums of money." It is not so wide a description as in most cases is given, but still as this was a money bequest it seems to me that dealing with those words reasonably there is no escape from the conclusion that in the sense of the marriage-contract this bequest came under the description "debt or sum of money." That leaves this as the only question, whether "pertaining" or "belonging to" is insufficient to apply to a case of this kind, where it is not absolute property, but only a contingent interest? Now, I confess I had considerable difficulty in regard to that matter at first, because these words as they are generally used are undoubtedly applied to an absolute and not a contingent right. But then we have to take this into account in addition, that the right to the legacy is assignable or transmissible, and that in the event of intestacy it would have fallen to this lady's personal representatives. Now, I do not know of any other test by which the character of the right could be determined than this, whether she could convey it to another, or if she does not test herself, whether it descends to her personal representatives. Now, upon that question I think it would be giving an unreasonable and strained construction to the words "pertaining and belonging" to say that they would not carry to the husband what would go to this lady's heirs or assignees.

Coming to that conclusion renders unnecessary and without interest the solution of the question, whether if this was not carried by the marriage-contract it passed to the husband *jure mariti*? My opinion is it would have passed to the husband by this right. It was a personal right, and though not absolute, it was part and parcel of her estate, and as such would have passed to the husband supposing there had been no marriage-contract at all.

LOED RUTHERFURD CLARK—I am of the same opinion.

The statement of the English law which governs the English deed satisfies me that the fund with which we are dealing formed part of the personal estate of Mrs Pringle, and simply for this reason, that if she had died intestate it would have been taken up by her personal representatives, and if she had chosen to assign it her assignees would have been entitled to it. Now, what is taken by her representatives *ab intestato* must have been a part of what she could test upon, and what a person has power to dispose of must be part of her estate, and as such it would, in the absence of anything to the contrary, go to the husband *jure mariti*—for the *ius mariti* is really a token of property. It is said that this fund was not a vested interest in the language of the English law. Probably the English law attaches a different meaning to the word "vested" from that which we attach to the same word, because what is not vested in a person according to our law would not be

transmissible by him, nor at death would pass to his representatives. But although that is the Scottish law, the English law, we are told by people versed in that law, is quite different, because the fund in question although not a vested interest, did fall to the personal estate of Mrs Pringle—descending, for the reasons already mentioned, *ab intestato* to her representatives, and passing by her assignation. That being so, the case is freed of all difficulty, because the assignation by the marriage necessarily excludes any claim by the personal representatives of this lady, inasmuch as the *ius mariti* in such circumstances carries her whole personal estate. I am therefore of opinion that the question should be answered in the sense that this fund was carried to Mr Ritchie *jure mariti*.

I confess I should have more difficulty in holding that the marriage-contract assigned it. At the same time, I think if I were to decide that question I should also hold it was sufficient to have carried this fund, not vested in the English sense, but, I think, vested in our sense of the word.

The Court pronounced this interlocutor :—

"The Lords having heard counsel for the parties on the Special Case, are of opinion that the right of Mrs Catherine Fergusson or Ritchie to one-fourth part of the two sums of £4000 mentioned in the Case was conveyed to Henry Ritchie, her husband, by the contract of marriage entered into between them, and further if it had not been so conveyed it would have passed to the said Henry Ritchie *jure mariti*: Find and declare accordingly, and decern."

Counsel for First Parties—Kermack. Agents—Mackenzie & Kermack, W.S.

Counsel for Second Party—Low—Dickson. Agents—J. & F. Anderson, W.S.

Counsel for Third Party—D.-F. Mackintosh—Rankine. Agents—A. & A. Campbell, W.S.

Wednesday, March 3.

SECOND DIVISION.

[Lord M'Laren, Ordinary.]

UNION HERITABLE SECURITIES COMPANY (LIMITED) v. MATHIE.

Property—Servitude—Implied Grant—Way of Necessity.

Certain buildings in a town were built in a square, the fronts being to certain streets, and the square common ground at the back. They were built in two lots A and B. Through B as originally constructed ran a pend which was used by all the inhabitants of the buildings, and especially by the tenants of the proprietors of lot A, as a cart entrance to bring in flour to their bakery. After some years the dispoinee of the proprietors of lot B attempted to shut up the pend, although no other entrance of the same nature and value to lot A could be made except by destroying