

1775.

 BOYD
 v.
 STEEL.

statute, upon which the respondents rely, as chiefly operating against the dam dyke, can neither be extended to it in words, nor by construction. In the whole clause dam dykes of any kind are never mentioned, and the clause only inflicts penalties on such as should, after the 12th day of May 1771, use the unfair practice of beating the water, or place or set any white object on the river to frighten the fish from going up the water.

Pleaded for the Respondents.—The mode of fishing complained on the part of the respondents, and the engines therein used, are prohibited both by the laws of England and Scotland; and as they have the direct effect of preventing the fish from going up and down the river, they fall within the intendment and enactment of the late statute of 1771. The practice of driving the salmon out of the pinfolds into the back nets, falls within the *ipsissima verba* of the statute, whereby persons are prohibited to beat the water, which the appellants always do when they observe salmon in the pinfolds.

After hearing counsel, it was
 Ordered and adjudged that the interlocutors complained of be affirmed.

For Appellants, *Alex. Wedderburn, J. Dunning.*

For Respondents, *Ja. Montgomery, Henry Dundas.*

Not reported in the Court of Session.

 (M. 7221.)

JOHN BOYD,	-	-	-	<i>Appellant ;</i>
JAMES STEEL,	-	-	-	<i>Respondent.</i>

House of Lords, 10th March 1775.

ABSOLUTE DISPOSITION—BACK BOND—REDEMPTION—IRRITANCY.

An absolute disposition was granted to lands bearing to be sold for a fair and adequate price then advanced, with a back bond of same date, allowing redemption of the lands within five years of the date thereof. This period expired without repayment. Held, in the Court of Session, that after expiry of the term, though no declarator of irritancy had followed, the lands were to be held irredeemable for

the price then paid—that price being a fair value at the time. For full report of case *vide* Morison, p. 7221.

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On appeal to the House of Lords, it was

Ordered and adjudged that the interlocuters be affirmed, with £50 costs.

ANNAND, &c.

r.

SCOTT, &c.

For Appellant, *Dav. Dalrymple, John Dalrymple.*

For Respondent, *Ja. Montgomery, Gil. Elliot.*

(5844.)

Messrs. ANNAND and COLQUHOUN, and their Assignees, and Messrs. GIBSON & BALFOUR, Merchants, Edinburgh, and their Trustee, - - - } *Appellants ;*

HELEN CHESSELS or SCOTT, and JAMES SCOTT, her Husband, - - - } *Respondents.*

House of Lords, 24th March 1775.

JUS MARITI—EXCLUSION OF DO.—Where a party conveyed his heritable and moveable estate to his daughter, in trust for behoof of herself and children, excluding her husband's *jus mariti* in the event of his insolvency; Held that his creditors were not entitled to claim any of his moveable estate, the same being vested in the daughter; but that they were entitled to claim the rents of the heritable, and *interest* of the *moveable estate* up to the date of the husband's insolvency, on which event his right of administration ceased, in terms of the express provision in the settlement.

The deceased Archibald Chessels had, for a number of years prior to his death, considerable business transactions with Mr. Scott, who was married to his daughter, the respondent, Helen Chessels.

Before his death he executed a settlement, setting forth this narrative:—“ Considering it possible, though I hope “ not probable, that James Scott, merchant in Edinburgh, “ spouse to Helen Chessels, my daughter and only child, “ may, after my death, fail in his circumstances, and become “ insolvent; and in case my daughter (the respondent) as “ heir and executor to me, was to succeed to my estate, heritable and moveable, without any limitations or restrictions, the same, at least to the amount of her husband's “ *jus mariti*, may be evicted by his creditors for payment of “ his debts, and she may be induced to grant deeds in pre-