[27*th June* 1839.]

(Appeal from the Court of Session, Scotland.)

(Ex parte.)

JAMES CHARLES MACRAE, Appellant.[1] (No. 21.)

[*Sir W. Follett—Sandford.*]

MARIA LE MAISTRE MACRAE or HYNDMAN, and Husband, Respondent.

Outlawry—Entail—Trust.—A party executed a disposition of his heritable property ex facie absolute, but which the disponees afterwards declared by a separate deed was held in trust for the grantor, his heirs and disponees. He was afterwards cited to appear before the Court of Justiciary for murder alleged to have been committed previous to the date of said disposition; and, on his not appearing, sentence of fugitation passed, and denunciation followed thereon, which was recorded. Some years afterwards, when still unrelaxed, he executed a deed, directing his said trustees to execute a strict entail of his property in favour of certain parties, which was accordingly done, and after his death recorded by the trustees. In a challenge of the entail by the heir at law,—Held (affirming the judgment of the Court of Session) that the entail, and subsequent registration thereof, were valid and effectual, in respect that a sentence of outlawry does not deprive a party of the right of absolute disposal of the fee of his property.

1ST DIVISION.

Lord Ordinary Moncreiff.

THE late James Macrae esq., of Holmains, was, on 26th May 1790, cited edictally, on criminal letters raised against him at the instance of his Majesty's

[1] Fac. Coll. 22d Nov. 1836; 15 D., B., & M., 54., and App. 1312.

MACRAE v. MACRAE and another.

27th June 1839.

Statement.

advocate, for his Majesty's interest, to appear before the High Court of Justiciary of Scotland on the 26th July then next, to answer for the murder of Sir George Ramsay of Bamff, bart., whom he had shot in a duel upon the 13th of April 1790, and who died in consequence on the 16th of the same month. The will of the criminal letters commanded the messenger to charge the party complained of to come and find caution, "under pain of rebellion and putting him to the horn;" and on his failing to do so, "to denounce him our rebel, "and put him to the horn, escheat and inbring all his "moveable goods and gear to our use for his contempt "and disobedience." Having failed to appear, the usual sentence of fugitation was pronounced against him on the 26th of July 1790. The sentence was in these terms:—"The Lords Commissioners of Justiciary decern "and adjudge the said James Macrae to be an outlaw "and fugitive from his Majesty's laws, and ordain him "to be put to his Majesty's horn, and all his moveable "goods and gear to be escheat and inbrought to his "Majesty's use, for his contempt and disobedience in "not appearing the day and place, in the hour of "cause, to have underlied the law for the crime of "murder," &c.

On the day following that on which the aforesaid sentence was pronounced, letters of denunciation were raised against Mr. Macrae. These letters, which bore the signet of the High Court of Justiciary, commanded the messenger to denounce him rebel, &c., "for his being "an outlaw and fugitive from our laws for the crime "aforesaid." These letters were put in execution on the 28th and registered on the 29th of July 1790.

Previously to the citation on the criminal letters, that

is to say, on the 8th May 1790, Mr. Macrae had executed an absolute conveyance of his estate of Holmains in favour of Lord Glencairn and Mr. Alexander Young and the survivor of them, and their heirs and assignees, heritably and irredeemably, with an assignation to the rents falling due from and after Whitsunday 1789. Upon the precept contained in the above conveyance base infeftment was taken on 15th May 1790, in favour of the disponees, and duly recorded. After the death of Lord Glencairn, Mr. Young, the survivor, executed on 10th April 1793 an absolute conveyance of the same estate in favour of Messrs. Duncombe, Pettiwood, and Le Maistre, and the survivors or survivor of them and their assignees. The last-named gentlemen executed in the same year, 1793, a deed of declaration of trust whereby they declared that the said estate was vested in them "in trust only for the use and behoof of the " said James Macrae, his heirs and disponees, and for the " proper support and maintenance of his family, but in " no shape for our own use and benefit or the use and " behoof of any of us," &c. " And further, we hereby " bind and oblige ourselves to denude of this trust " whenever so required by the said James Macrae esq., " and his heirs or disponees, and to dispone and recon- " vey the said lands, and to the said James Macrae " himself, or any other person or persons having right " from him to the same." After this trust Mr. Macrae executed several settlements in favour of his son and daughter, which, however, he afterwards revoked (6th May 1807) by a deed or mandate to his trustees, whereby he authorized them to make and execute a strict entail of the estate of Holmains in favour of his son James Charles Macrae (the appellant) and the heirs

MACRAE v. MACRAE and another.

27th June 1839.

Statement.

whomsoever of his body, whom failing, to his only daughter Mrs. Hyndman (the respondent), with other substitutions, and binding himself and his heirs to warrant such deed of entail in the most ample manner. The same deed also contained a nomination of the trustees and one Mr. Jack as tutors and curators to his children failing their mother.

These trustees accordingly, on 7th and 10th March 1809, executed a deed of strict entail of the said estate, in favour of the appellant and the other heirs therein named. An annuity was reserved for Mr. Macrae during his life, and a provision of 5,000*l.* which he left to the respondent, and declared to be a real burden affecting the entailed lands. The entail contained a revocation of the previous dispositions; it being declared however, that the same became effectual if the entail should be found ineffectual. On 13th May 1809 infeftment on this entail was taken in favour of the appellant.

Mr. Macrae died unrelaxed on 16th January 1820, leaving his son, the appellant, then at the age of twenty-nine years, and the respondent, Mrs. Hyndman, his only daughter, who was born in 1800, then still a minor.

In May 1820 the trustees petitioned the Court for authority to record the entail, which was accordingly done. On his father's death the appellant entered into possession of the estate, which he held for some years, under the entail; but in June 1831 he raised an action of reduction, concluding for reduction of the entail and of the previous deeds as the deeds and warrant on which it proceeded.

Mrs. Hyndman the respondent resisted the reduction.

The pleas maintained by the parties respectively upon

the validity of the deed of entail were (as stated on the record) in these terms:—

1. The late Mr. Macrae having been outlawed by sentence of the Court of Justiciary, and this sentence of outlawry and fugitation having been followed up by letters of denunciation at the instance of both the public and private prosecutors, and these letters having been duly executed and recorded, he became civiliter mortuus, and lost the benefit of the law of the country, to which he was declared a fugitive and a rebel. 2. An outlaw, in the circumstances stated, having lost and forfeited his legal person, can do no act, directly nor indirectly, by which the right of his heirs in his heritable property can be injured or affected; and he can grant no mandate to a third party to execute or subscribe any deed which he had not the legal power of executing himself. 3. The criminal proceedings against the late Mr. Macrae, on account of the murder of Sir George Ramsay of Bamff, deprived him of all right in and to his heritable estate in Scotland; and the different deeds executed by him were invalid, to the effect of depriving his heirs of the right which had opened to them so long as the sentence of outlawry was unrecalled. 4. The trust deed executed in favour of Lord Glencairn and Mr. Young, being executed subsequent to the crime of which the late Mr. Macrae was accused, and in consequence of which he was declared an outlaw and a fugitive, could not have the effect of preserving to him a right to the estate of Holmains, or of validating the deeds subsequently executed by his directions with regard to the fee of that estate. 5. Where a property is disponed in trust for the benefit of an individual and his heirs, the trustees are merely the representatives of those indi-

MACRAE v. MACRAE and another.

27th June 1839.

Statement.

viduals as their separate rights emerge. 6. The plea of homologation does not apply to this deed of entail now under reduction, in the circumstances of the case.[1]

1. The deed of entail under reduction is ex facie a formal and effectual entail. 2. The sentence of outlawry against Mr. Macrae did not in any way affect his right to the fee of the estate. It merely operated as a forfeiture of his moveables, and of his liferent interest in his heritable estate. Besides, Mr. Macrae having, before he was cited on the criminal letters, conveyed his estate to Lord Glencairn and Mr. Young, and having been feudally divested of the fee prior to the outlawry, it would not have been competent at any rate to object to the subsequent deeds which are under reduction, on the ground that they are struck at by the outlawry. 3. The entail has been homologated by the pursuer.—Mackenzie, 4th December 1767.[2] 4. It is jus tertii to the pursuer to found upon the supposed infringement of the rights of the Crown.

The Lord Ordinary (9th March 1833) ordered cases; and thereafter (19th Nov. 1833) his Lordship, upon advising the cases, made avizandum to the court, adding the following note:—" It would be proper to report " this case to the court, on account of its peculiarity " and admitted novelty. But the Lord Ordinary, " though he has carefully considered the argument,

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[1] Stat. 1592, c. 109, 128; Ersk. b. ii. tit. 5. s. 57; Stair, b. iv. tit. 47. s. 10, 11; 2 Bank. 257, vol. iii. p. 100; 4 Blackst. Com. 319; Coutts v. Durie, 30th Nov. 1791, Mor. 4775; Davidson v. Kidd, 20th Dec. 1797; Birrell v. Birrell, 14th Dec. 1825, Fac. Coll.; Angus v. Angus, 6th Dec. 1825, Fac. Coll.; Dick v. Gillies, 4th July 1828, Fac. Coll.; Gardner v. Gardner, 3d Dec. 1830, Fac. Coll.; and Colquhoun v. Colquhoun, 16th Dec. 1828, Fac. Coll., and cases therein cited.

[2] Dict. 5665.

" both in a very full hearing and in the revised cases,
" thinks it proper to report the cause without at present
" expressing any opinion; because it will be seen that
" he was the counsel who was privately consulted by
" the pursuer in 1820, and that something in the argu-
" ment turns on the nature and effect of that consulta-
" tion. The only observation he has to make is, that,
" when it is ascertained that the sentence of the Jus-
" ticiary was followed by denunciation of the deceased
" as an outlaw, duly recorded, if the case of the de-
" fenders were to depend entirely on the proposition in
" law anxiously and confidently maintained by them in
" this case, that such an outlaw is under no other or
" different disability for the performance of legal acts,
" than that which attaches to a person denounced on
" letters of horning for a civil debt, he should think
" that it involved a question of very great importance.
" He is not at present prepared to assent to the doctrine.
" But the case may not, and probably does not, depend
" on that point. (Signed) " J. W. M."

The First Division of the Court, upon advising the cause, intimated an opinion that in the special circumstances no homologation of the entail had taken place; but in regard to the effect of the sentence of outlawry and the recorded denunciation, their Lordships differed equally in opinion, and a hearing in their Lordships presence was ordered.

Before the cause was disposed of, a supplementary reduction was raised, in order to set aside the registration of the entail and the order on which it proceeded. The record in that action was laid before the court along with the original cause, but the actions were not conjoined.

MACRAE
v.
MACRAE
and another.

27th June 1839.

Statement.

The Lords of the First Division (4th February 1834) having resumed consideration of the cause, ordered supplementary cases, which were advised on 9th July 1834, at which time Lord Mackenzie had become a judge of that division in room of Lord Craigie deceased. Their Lordships being then again equally divided, the cause was appointed to be argued by one counsel of a side, after which the whole pleadings were laid before the other judges, under one interlocutor, in these terms: "Remit to the Lords of the Second Division and per- "manent Lords Ordinary, and request their Lordships' "opinions, either severally or collectively, on the ques- "tion, Whether the deed of entail executed by Mr. Dun- "combe and others by mandate of 6th May 1807 "from the late Mr. Macrae, then under sentence of "outlawry and fugitation by the High Court of Jus- "ticiary, for failing to appear to answer to an indict- "ment for murder, be liable to reduction at the instance "of his son, the pursuer, his heir at law?"

Written opinions by the other judges having been returned[1], the cause was finally advised (22d November 1836) by the Lords of the First Division, who, in both actions, pronounced this interlocutor:—"Sustain the "defences, assoilzie the defenders from the whole con- "clusions of the libel, and decern, and find no expenses "due to either party?"

Judgment of Court, 22d Nov. 1836.

The pursuer appealed.

The cause was heard ex parte, no case having been lodged for the defenders.

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[1] See these opinions in the reports of the case in Fac. Coll., 22d Nov. 1836, and in 15 D., B., & M., 64.

Appellant.—In the original action.—The ground taken by the Court below, that sentence of outlawry did not affect the civil rights of a party to a greater extent, denunciation following, than diligence of horning for not paying a debt, was ill founded. 1. Outlawry for crimes existed prior to denunciation or horning; 2. Denunciation, as introduced by statute, was limited in its effects to the penalties of escheat, and no severe personal disabilities followed; and, 3. The effects of outlawry for crime continued the same as they had always been, while the effects of civil rebellion were at an end. Outlawry, when considered in reference to its origin and consequences, and the authority from which it emanated, clearly avoided the freedom of the outlaw;—an immediate and complete loss of all personal rights and privileges of the law followed. The outlaw amittit legem terræ, and could not hold land, nor sue or defend in a civil or criminal action, nor give evidence, or act as a juryman.[1] These consequences affect his right to make an entail; for the statute 1685, c. 22, specially declares, that it shall be lawful to his Majesty's "subjects" to tailzie their lands, &c., thus bestowing a special and statutory power to execute a peculiar species of conveyance. The outlaw could not have enforced the obligations in the trust deed. The title on this entail had hitherto been on the precept in the disposition by the trustees. But, suppose the title had been to be completed by resignation, could the Crown have been required to grant a charter upon

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Reg. Maj., c. 12; Quon. Attach., c. 18; Balfour's Prac. 515; 1 M'Kenzie, 177; 1567, c. 33; Lowthian's Forms, p. 144; 2 Hume, Cr. 262, 2d edit., and p. 280, 3d edit.; Stair, b. ii. tit. 4. s. 61., b. iv. tit. 47. s. 10., and b. iii. tit. 3. s. 26; Instit., lib. i. tit. 1. s. 20; Stair, b. iv. tit. 9. s. 1; Balfour, 483; M'Kenz. Observ., p. 131, Dirleton v. Rebellion; Ersk. b. ii. tit. 5. s. 66; Bank. ii. 427; Alison's Prac. of Crim. Law, 350.

MACRAE v. MACRAE and another.

27th June 1839.

Appellant's Argument.

the resignation of the outlaw or his attorney. It had been urged below that the fee of the estate still remained subject to be disposed of by the outlaw; but the authorities show that the fee recognosced into the hands of the superior was only reclaimable by the heir upon the outlaw's death. The term "life-rent escheat" is only meant to show that the property remained with the superior merely during the lifetime of the party outlawed. Another argument of the defendant had been that a party outlawed by a sentence of the Criminal Court was not to be considered in a worse situation than a civil debtor under the horn, some of whose deeds were sustained; the answer to which was, that the status of a criminal deprived him of all personal rights and privileges.[1]

On the supplementary action, the mandate granted by Mr. Macrae, an outlaw, to make a deed of entail could give no authority to the parties in whose favour it was granted, his nominal trustees, to apply to the Court of Session for the recording of the deed of entail. The outlaw had no right to appear in the Court of Session himself, and could grant no mandate to a third party to appear for him. Besides, the mandate fell by the death of the granter, and so far as it derived efficacy from the granter, it fell by his death. The trust disposition was likewise at an end by the death of Mr. Macrae, and consequently the trustees had no right after his death to appear as such. The trustees were not authorized to apply to the Court by the heirs of entail for the registration of the deed, and having no interest under it, they

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[1] Stat. 1685, c. 22; Elch. Notes on Stair, p. 194; Stat. 1612, c. 3.; 2 M'Kenz. Works, 225; Ersk. b. ii. tit. 3. c. 16.; Craig, lib. ii. dig. 18. s. 31.; Balfour v. Brieves, p. 429. c. 48.

had no right to apply by petition to the Court of Session for its registration. The question upon this point had been fully discussed in the other case between the appellant and respondent, and he therefore begged leave to refer to that argument.

Appellant's Argument.

LORD CHANCELLOR.—This case, which was heard ex parte, is one of great importance to the parties, and it raises a new question in the law of Scotland. The circumstance that it was only argued on one side, makes it the duty of the House to be very explicit and careful as to the course which your Lordships should pursue. Your Lordships have no information how it happens that the judgment of the Court below, in which fourteen judges[1] of the Court of Session concurred, is not supported by the party in whose favour that judgment was pronounced. But there are interests to be protected, not confined to those who are the parties to this proceeding, but the interests of parties not yet in being, who may become entitled under the entail now in question. Care is also requisite not to lay down any rule of law which may operate upon other interests in other cases, by giving effect to that which is contended by the appellant to be the rule of law in Scotland in respect to the question here raised.

Ld. Chancellor's Speech.

The facts, in so far as necessary to make my observations intelligible, are shortly these: In July 1790 a party, then fee-simple proprietor of an estate, being charged with the crime of murder, and not appearing, underwent a sentence of fugitation, and was put, according to the expression of the law of Scotland, to the horn, by which he incurred certain penalties, and was denounced

[1] Including Lord Craigie, who died before the final decree.

MACRAE
v.
MACRAE
and another.

27th June 1839.

Ld. Chancellor's Speech.

as an outlaw and fugitive. Previously, however, to the proceedings which gave rise to that process, and on the 8th of May of the same year, he had executed a disposition of his estate, of which he was absolute owner in fee, to certain persons in trust. He did not at that time execute any declaration of trust, but he parted with his legal title to the estate previous to the time when he incurred the disability arising from the sentence of fugitation by being put to the horn.

In the year 1793, after the criminal sentence of outlawry had been enforced, the trustees executed a declaration of trust, by which they declared that the property had been conveyed to them upon trust, to abide the disposition of the author of the deed of May 1790. At a subsequent period, under a mandate of the original owner of the estate, then labouring under such incapacity as was the consequence of the proceedings taken against him, an entail was executed, under which the defenders, as substitute heirs, claimed. The heir of entail, the eldest son, (the father, maker of the entail, being now dead,) claims the estate unfettered by such entail, in respect of his father's alleged incapacity at the time to exercise such an act of proprietorship.

When the cause was argued in the court below it was thought to involve principles of such importance and novelty that the whole judges gave their opinions upon the case. Thirteen judges gave a final opinion; but there was also Lord Craigie, who had been a judge in the earlier steps of the cause, but who had died before the final decision; and they all concurred, but not for the same reasons, that the pursuer had no title to the relief he prayed for.

Now it is to be observed, that, prior to any process taking place from which the incapacity of the maker of

this entail is to be inferred, he had parted with the legal right to the fee of the estate. It is also clear, from the very terms that are used, and from all the authorities cited, that the effect of what did take place was a forfeiture of all his goods and moveables; and, in addition to this, there is, undoubtedly, not properly a forfeiture, but an escheat of the life estate;—the life-rent escheat, as it is called, not going to the Crown as a forfeiture, but going to the superior of the fee, on strictly feudal grounds:—the party fugitate or outlawed being incapable to render the services of a vassal, the overlord is considered entitled to adopt some other person in the outlaw's place during the life of the outlaw.

So far there is no dispute as to the rule of law in Scotland. The appellant, however, contends that beyond this there is a forfeiture of the fee itself, and hence that his father had actually, by force of the sentence, been divested of his fee; and of course, if he had been divested of his fee, and of all interest therein, then he could not have done that which was the apparent effect of the deed which he executed. After looking into all the authorities cited in the printed papers, and at the bar, in support of the proposition that the effect of these proceedings was a forfeiture of the fee, it appears to me that there is no doubt whatever, that that proposition cannot be maintained. All the authorities cited prove that a life-rent escheat only takes place, and that the fee remains in the outlaw. In this proposition all the judges concur; and there are several admitted incidents to this state of the property in Scotland, which show that that of necessity must be the effect of the operation of the outlawry,

MACRAE v. MACRAE and another.

27th June 1839.

Ld. Chancellor's Speech.

and that it does leave the fee in the outlaw. After the death of the outlaw it is admitted that the heir may proceed to complete his title by service to the outlaw. It is also admitted, on the part of the appellant, and cases referred to do establish, that after this life-rent escheat has taken place, which according to the doctrine of the appellant would divest the outlaw of the fee, if that outlaw, being an outlaw only by process of fugitation, afterwards commits treason, he forfeits the fee; that is to say, he forfeits what was left in him notwithstanding the life-rent escheat. If by prior proceedings the fee had gone out of him, there would be no possibility of a subsequent conviction of treason operating as a forfeiture of the fee. But it is not in dispute that that is the effect of a conviction for treason subsequently to the taking effect of the life-rent escheat.

It is also an admitted proposition, supported also by authority, that notwithstanding the life-rent escheat the outlaw is competent to give effect to onerous burdens upon his estate. It is also assumed that the estate remains in him, otherwise, if the estate had gone out of him, whatever might have been the right of the creditors, he the outlaw would not have had it in his power to give effect to any interests that might have operation against the fee itself.

I apprehend therefore, that your Lordships can entertain no doubt as to the correctness of the unanimous opinion of the fourteen judges, that notwithstanding the outlawry and the life-rent escheat, the fee remains in the outlaw.

But then, it was said, that although that be so, yet inasmuch as he is what the law calls civiliter mortuus, or in other words amisit legem, he has lost all the

advantage and privilege which the law could confer upon him, and that therefore, he is not competent to deal with that property which it is clear remained in him. Now Baron Hume and Mr. Alison enumerate the consequences of outlawry and being put to the horn, but neither of these authors on the criminal law of Scotland specify, among these, an incapacity to dispose of what remains vested in the outlaw. It is perfectly true, that the personal incapacity which he has incurred prevents him from appearing in any court of justice, or doing any thing which requires the interposition of a court of justice in his behalf, but there is no authority to show that he cannot execute a valid deed respecting that which by law is left in him.

Now, in this case nothing was necessary towards completing the title, so that no feudal objection exists to the deed subsequently executed. He does not appear in any court or require the assistance of judicial authority. The trustees were the legal owners; and the only question is, whether, as between the author of the trust and the heir, the former can, as against the heir, effectually destine the fee. That there is estate sufficient to be so dealt with is beyond all question, and accordingly the power of the trustees is equally clear.

The distinction betwixt the effect of diligence by horning in civil process and outlawry criminally was much discussed; but it is admitted that putting to the horn in civil process does not produce this incapacity; and yet outlawry is not in Scotland as in England in criminal cases equivalent to conviction, but both in civil and in criminal cases it is only a process for the purpose of compelling appearance. To me it seems needless to inquire how far these two processes are now the same. Many altera-

MACRAE v. MACRAE and another.

27th June 1839.

Ld. Chancellor's Speech.

tions have been introduced by the special statute, but no authority has been adduced to show that as to this point the outlawry in criminal cases differs from the same proceeding in civil diligence.

The judges below agree that the entail was good, and that it was not competent to the appellant to get quit of it. Of the thirteen judges who gave their opinions at the last decision of the case all agreed that the fee remained in the outlaw; nine[1] of them being of opinion that the outlaw had full dominion over the fee; four[2] thought that in this case he had properly and effectually exercised that dominion, upon the ground that the property was in trust, and therefore that it did not refuse the interposition of a court for the purpose of giving effect to the disposition of the property. Nine of the judges were of opinion that there was no difference between the powers in criminal and in civil cases.

What your Lordships have now to consider is not whether the several opinions entertained by the learned judges be correct or not, the sole question being whether the appellant has made out a case showing satisfactorily that the opinion of all the judges in the Court of Session was wrong, because, whatever grounds those learned judges may have had for the conclusion to which they came, the question is whether your Lordships have before you such grounds as will satisfy you that that judgment ought to be reversed. Without going through the nice distinctions which have occupied so much discussion below, there are two grounds on which it appears to me that the judgment of the Court below is

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[1] Lords Justice Clerk, Balgray, Gillies, Meadowbank, M'Kenzie, Medwyn, Corehouse, Fullerton, and Jeffrey.

[2] Lords President, Glenlee, Moncreiff, and Cockburn.

right. First of all, I consider it quite clear that notwithstanding what has taken place the fee remains in the outlaw, and that his personal disability has not been proved to apply to directing a trust previously vested in trustees. That exhausts the questions as they exist under the first appeal.

The second case in which an appeal has been presented was a suit for the purpose of reducing and getting rid of that which was done with the estate by the trustees under the mandate from the outlaw. Now if the appellant is wrong on the merits, if the entail be good as against him, he has no interest in the second question, inasmuch as the entail being valid, it is immaterial as between the heir and the maker of it, whether the recording was valid; an unrecorded entail being effectual inter hæredes, although not betwixt them, as with third parties, onerous creditors. But it appears to me that there is no ground whatever for the objection to the recording. The trustees are the parties who appear as owners of the estate; the outlaw does not appear; he is no party to the proceedings; the trustees are indeed acting under his mandate executing a duty he requires them to perform; but for all feudal purposes they are the owners of the estate, and so dealing with it. No irregularity is pointed out, and no case has been made to show that any of the proceedings have been illegal so far as the trustees are concerned.

If therefore your Lordships concur in the opinion I have expressed, that the entail itself was good, and that the heir was barred of his right, as fee-simple proprietor, by the entail so carried into effect by the trustees under the mandate of the outlaw, your Lordships will have no difficulty in concurring with the judgment of the Court

MACRAE v. MACRAE and another.

27th June 1839.

Ld. Chancellor's Speech.

of Session, that no objection can be made by the heir against the recording of the entail.

If there had been more difficulty in the case, and if, upon the papers before you and the arguments at the bar, real doubt had arisen as to the propriety of the judgment below, no doubt your Lordships would have regretted that you had to come to an adjudication upon the case without the benefit of hearing the argument for the defenders. But from the appellant's own case, as made by himself, and the authorities he has been compelled to refer to, and from that glimmering only of the defenders case which is to be seen in the papers of the appellant, who refers only to the arguments on the other side with the view of repelling them, I entertain no doubt that the judgment of the Court below ought to be affirmed.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the said interlocutor therein complained of be and the same is hereby affirmed.

ARCHIBALD GRAHAME, Solicitor.