

Outer House.

5. JULY 1843.

SUMMONS OF DECLARATOR,—
THOMAS SANDS
AGAINST
ROBERT HALCRO SANDS & OTHERS.

DAVID DOUGLAS, W.S., Agent.

MR BEVERIDGE, Clerk.

SUMMONS OF DECLARATOR,

THOMAS SANDS, Esq. of Swanbister,

AGAINST ^p b

ROBERT HALCRO SANDS and Others.

VICTORIA, &c. WHEREAS it is humbly shewn to Us by
Our lovite, **THOMAS SANDS Esq. of Swanbister, Pursuer,—**
THAT the deceased Doctor Hugh Halcro of Cowbister, by disposi-
tion and deed of entail, bearing date the 13th day of February, and
recorded in the Register of Entails the 8th day of August, both
in the year 1770, and also recorded in the Books of Our Coun-
cil and Session the 12th day of April 1773, for the causes, and
upon the conditions, and under the reservations, provisions and
declarations, therein and herein aftermentioned, gave, granted,
transferred and disponded to and in favour of William Halcro
his son, and the heirs of his body ; whom failing, to the heirs
male or female, lawfully procreate, or to be procreate of his the
said Dr Hugh Halcro's body, either by his then present or any
subsequent marriage ; which failing, to Margaret, Cicila, Jean, and

Entail by Dr
Hugh Halcro.

Destination.

Lands.

Mary Halcros, his sisters-german, equally betwixt them, and the heirs lawfully procreate or to be procreate of their bodies; and failing any of them by decease without such heirs of their bodies, the share or shares of the deceased to fall to the survivor or survivors equally, and their foresaids; which all failing, to his own nearest lawful heirs, or assignees whatsoever, heritably and irredeemably. All and Sundry the island, lands and others, therein and aftermentioned, to wit, All and Whole the island and lands of Cava, with the Ness thereof, as the same is limited and surrounded by the sea on all its parts, together with the teind-sheaves of the same included therewith, which were never in use to be separated from the stock, with the vicarage teinds of the said island inherent with the right of property thereof, and which were never in use to be paid or uplifted separately therefrom, with wreck, ware, waith and hail pertinent thereof, lying in the late regality and stewartry, and now sheriffdom of Orkney, with Herezalds, bloodwitts, and the privilege of holding courts therein and emoluments thereof, and haill other privileges belonging thereto; all and haill the three penny land of Cowbister, and half penny land of Orakirk, with the mansion-house of Cowbister, lying in the town of Petertown; all and haill the five meills malt nailling udal land of Buxa, lying in the town of Claistron; all and haill the one farthing land of Hangaback, the one farthing land of Gosaquoy, the halfpenny land of Gyre, the lands of Skegibister, the halfpenny land of Croval, the one farthing land of Windbreck; all and haill the lands of Lerquoy, the lands of Ingamire; all and haill the lands of Aikers; all and haill the lands of Gairy, the one penny land of Middhouse, the house and lands of Breckney, the one penny land of Soulis, the one penny land of Skebistoun, the lands of Breck, the lands of Swanbister called Stove, the one penny and one halfpenny land of Swanbister called Piggan, the one penny and one farthing land of Inksitter, the halfpenny land of Quoy-clerks and Nethermyre; and sicklike, all and haill the one penny and halfpenny land of Cregar, with the mansion-house and dwelling-place of Gyre, with the parsonage and vicarage teinds of the said whole lands included, and whole houses, office-houses, biggings, yards, mosses, muirs, meadows, outbrecks, outsetts, annexis, connexis, commons, commontys, common pasture, parts, pendicles, quoyes, quoylands, cotts, cottages, and

Piggan

hail other righteous privileges and pertinents of the said whole lands, all lying in the towns of Petertown, Claistron, Orphir, and Swanbister, parish of Orphir, mainland and sheriffdom of Orkney; all and hail the nine settings malt mailing udal land, under the house of Clecking, with the whole houses, biggings, yards, mosses, muirs, meadows, cotts, cottages, annexis, connexis, commontys, common pasture, outbrecks, onsets, parts, pendicles, and whole privileges and pertinents thereof, lying in the town of Ireland, parish of Stennes, mainland and sheriffdom of Orkney, with all right, title, interest, claim of right, property and possession, he the said Dr Hugh Halcro, his predecessors or authors, heirs or successors, had or might have, claim, or pretend to the said lands and others foresaid, or to any part thereof, and as the same are more particularly described and contained in the original rights, securities, and conveyances thereof: In the which lands, island, houses and others, with the pertinents thereof, the said Dr Hugh Halcro bound and obliged him, his heirs and successors, as well male as of line, tailzie, conquest and provision, and all others his heirs and successors whatsoever, renouncing the benefit of the order of discussing them, to duly, lawfully, and sufficiently infest and sease the said William Halcro, his said son, and the heirs of his body, which failing the other heirs and substitutes of tailzie therein and herein before specified, and that by two several infestments and manners of holding, the one thereof to be holden of him and his foresaids, in free blench, for payment of a penny Scots money at the term of Whitsunday yearly, in name of Blanch farm, upon any part of the ground of any of the said lands, if the same be asked allenary; and the other of the said infestments to be holden from him and his foresaids, of his immediate lawful superiors thereof, by the same tenure, and as freely as he, his predecessors or authors, heirs or successors held, or might have holden the same, and that either by resignation or confirmation, or both, the one without prejudice of the other; and for effectuating the said infestment by resignation, he thereby made and constituted

Obligation to infest.

Procuratory of resignation.

, and each of them, his lawful and irrevocable procurators and attorneys for him, and in his name, to resign, renounce, surrender, upgive, overgive and deliver, as he thereby resigned, renounced, surrendered, *simpliciter* upgave, overgave, and delivered all and sundry the

said island, lands and others, as therein and herein before described, with all right, title and interest, claim of right, property and possession, he, the said Dr Hugh Halcro, his said predecessors or authors, heirs or successors, had, or might have claim or pretext to the said lands and others foresaid, or to any part thereof, and as the same are more particularly described and contained in the original rights, securities and conveyances thereof, in the hands of his said respective lawful superiors of the same, then, presently being, or that should happen to be for the time, or of his or their commissioners, having power to receive resignations thereto in his or their names, in favour, and for new infestment thereof to be made, given and granted to the said William Halcro, his said son, and the heirs of his body; which failing, to the other heirs and substitutes of tailzie therein, and herein before mentioned, heritably and irredeemably, in due and competent form; reserving always to him, the said Dr Hugh Halcro, his own liferent right and use of the haill premises during all the days of his lifetime, with power to him to make and grant such heritable securities as he should think proper upon the whole, or any part of the said subjects, for whatever debts or provisions were due by his said father or him, or for whatever debts he might contract at any time thereafter during his lifetime; reserving the liferent of the said two rouses and lands of Gyre and Buxa, and pertinents thereof foresaid, to such person or persons as he should appoint by a writing under his hand, of the date of the said entail; reserving, also, to Margaret Honyman his mother, widow of the deceased William Halcro, late of Cowbister, his father, such a terce or jointure out of the said lands, or any part thereof, as she should be entitled to according to law, or such provisions as might be settled upon her in lieu thereof: As also, reserving to Jean Warning, *alias* Halcro, then spouse of the said Dr Hugh Halcro, or to any his subsequent spouse, such a terce also out of the said lands, or any part thereof, as she, in the event of surviving him, would in law be entitled to, or to such provisions as may also be settled upon her in lieu thereof; with power also to him to provide any his younger children (if he any had,) in reasonable provisions out of the said estate: And it is by the said disposition and deed of entail declared, that the said William Halcro and

Reservation of his own liferent, and power to grant heritable securities.

Reservation of a jointure to his mother,

and to his spouse.

Power to provide his younger children.

his foresaids, and the other heirs of entail therein written, in the order of succession therein prescribed, should be holden and obliged to satisfy, pay, and fulfil all the obligations and provisions prestable and payable by the said Dr Hugh Halcro, and all the debts, both personal and real, contracted by his said father or him, and annual rents thereof resting unpaid at the time of his decease, with the expenses of his sickness and funeral charges: And also, it is by the said disposition and deed of entail expressly provided and declared, that it should, at no rate, be allowable for the said William Halcro, his said son, or his foresaids, nor for any other of the substitutes in the said disposition of entail, to sell or dispose upon the whole, or any part of the subjects thereby disposed, or to contract debts, or do any other deed, whereby the same, or any part thereof, might be carried off or evicted from the succeeding member or members thereof, or their hopes of succession thereto in any manner evaded; and if his said son, or any other of the said preceding members should do in the contrary, it is thereby declared, in the *first* place, that such deed or deeds of contravention should be absolutely and utterly void and null, and of no avail or effect whatsoever; and, in the *second* place, that the contravener, and the descendants of his or her body, should, *ipso facto*, forfeit and lose all right to the subjects thereby disposed, and all benefit of succession therein, and the same should forthwith access to the next heir or heirs in the present substitution, who immediately, on such contravention, might commence an action of declarator thereof, and serve heir to the person who died last invest in the said subjects, passing by the said contravener without representing him or her, or being any-ways liable to the said contravener's deeds, debts or obligations. Nevertheless, it should be allowable for any of the heirs above mentioned to satisfy and pay off, or give sufficient and reasonable securities on the said subjects, for what debts or provisions might be resting unpaid, provided, or due by the father of the said Dr Hugh Halcro, or him, provided they did not exceed the privilege or liberty granted them by this faculty: As also, it should be in the power of the heir for the time, whether male or female, he to provide his spouse, and she to provide her husband, in such terce or courtesy as they would be entitled to out of the said lands according to law: And also, to provide their

heirs of entail to pay and fulfil all debts and obligations of entailor or his father.

Prohib. clause.

Irritant clause.

Resolutive clause.

Power to the heirs of entail to pay or give security for debts due by the entailor or his father.

Power to provide spouses,

and younger children.

Nomination of tutors and curators.

Declaration that any of the entailers' sisters paying the debts due shall be entitled to relief against the others.

Power to sell to each other their shares of the estate.

younger children in reasonable provisions, payable out of the same, after the former debts and provisions are first paid off: And it is by the said disposition and deed of entail expressly provided and declared, that the management of the said estate, in the absence of his the said Dr Hugh Halcro's said son, who was then in Jamaica, until he arrived and settled in Orkney, and until he attained to the age of twenty-one years complete, should belong to Joshua Johnstou, writer in Stromness, and the said Margaret Halcro his spouse, and to the said Jean Halcro, the said Dr Hugh Halcro's said sisters, or to any one or more of them in life for the time; and for that purpose he thereby nominated and appointed them, or any one or more of them, to be tutors and curators to his said son, and all his other children that should be within the years of tutory and curatory, with certain powers, privileges, and immunities, particularly mentioned in the said disposition and deed of entail: And it is also thereby declared, in the event of his said sisters, or any of them, succeeding to the said estate in virtue thereof, that such of them as should pay the whole, or any part of such of the said debts that might be due, should be entitled to relief from the rest, in proportion to their shares of the said subjects; and also, in the event foresaid, it should be in the power of either of them to sell to the other the whole, or any part of the share of the said estate that falls or belongs to them, but to none else: And it is also, by the said disposition and deed of entail, expressly provided and declared, that the foregoing irritant and resolute clauses should be contained in the infeftments following thereupon, and repeated in all the subsequent and other conveyances, retours, and infeftments of the said estate and pertinents thereof, thereby disposed, as the same from time to time should pass from one to another; and that the failure therein by any of the said heirs or substitutes, should import and incur a contravention against the omitter, and his or her heirs, so as to make the said inheritance fall to the substitute next in order to the succession, as therein prescribed, who might from that time forward sue for a declarator of the delinquency of the said estate, and establish the right to the same in the person of the prosecutor or prosecutors, in the manner therein mentioned; and upon the said resignation, acts, instruments and documents, one or more to call for and receive, and,

in general, every other thing to do, or cause to be done, in relation to the premises, that the said Dr Hugh Halcro might have done himself if he were personally present, all which he should hold firm and stable without revocation; as the said disposition and deed of entail, containing an assignation to the writs and rents, precept of sasine, and sundry other clauses in itself more fully bears: That upon the death of the entailer, the said deceased Dr Hugh Halcro, he was succeeded in the said lands and estate, contained in the said disposition and deed of entail by his son the said William Halcro, the institute, who, in virtue thereof, and of the precept of sasine therein contained, obtained himself duly infest and seased in the said lands and estate, conform to instrument of sasine in his favour, bearing date the 4th day of October, and recorded in the Particular Register of Sasines at Kirkwall, the 30th day of November, 1781: That the said William Halcro having died in the year 1786, unmarried, and without leaving lawful issue of his body, and no other issue, male or female, existing of the body of the said deceased Dr Hugh Halcro, the entailer; and the said Jean Halcro having predeceased the said William Halcro, without lawful issue of her body, and the said Mary Halcro having also predeceased him, the succession to the said lands and estate devolved upon the said Margaret Halcro and Cicilia Halcro, the two surviving sisters of the entailer the said Dr Hugh Halcro, and upon the pursuer the said Thomas Sands, only son of the said deceased Mary Halcro, as heirs-portioners under the destination of the said disposition and deed of entail: That in exercise of the privilege conferred by the said disposition and deed of entail upon the sisters of the entailer, in the event of their succession to the said lands and estate, the said Cicilia Halcro, by disposition and assignation, dated the 2d day of October 1794, and recorded in the Books of Council and Session the 24th day of October 1831, sold and disposed her one just and equal third part, *pro indiviso*, of the said lands and estate to her sister the said Margaret Halcro, then relict of the deceased Joshua Johnston, writer in Stromness: That the said Margaret Halcro died without any feudal title in her person to the said two-thirds, *pro indiviso*, of the said lands and estate, to which she had right as aforesaid, and was succeeded therein by her only lawful son John Johnston, who possessed the same upon

State of the succession upon the death of Dr Halcro, and of the institute.

Conveyance by Cicilia Halcro to her sister Margaret Halcro, of her one third of the estate.

Titles made up in
the persons of the
pursuer and James
Johnston.

apparency for several years, and was succeeded at his death by James Johnston, now of Cowbister, his eldest surviving son: That the said James Johnston and the pursuer the said Thomas Sands, jointly completed a feudal title in their persons to the said lands and estate, contained in the said disposition and deed of entail, as follows, viz.—RETOUR of the GENERAL SERVICE of the said James Johnston and the pursuer, as nearest and lawful heirs-portioners of tailzie and provision to the said deceased William Halcro their cousin, under the said disposition and deed of entail, whereby they acquired right to the unexecuted procuratory of resignation therein contained, which service was expedite before the Bailies of the Canongate, upon the 16th day of January 1832, and duly retoured to Chancery; CHARTER of RESIGNATION and CONFIRMATION, under the great seal, of the said lands and estate, in their favour, proceeding upon the said unexecuted procuratory of resignation; but with and under the conditions, declarations, provisions, limitations, clauses irritant and resolutive, contained in the said disposition and deed of entail; which charter is dated the 3d, and written to the seal, and registered and sealed at Edinburgh, the 22d days of February 1832; INSTRUMENT of SASINE following thereon in their favour, bearing date the 12th, and recorded in the particular register of sasines, &c. at Kirkwall, the 14th days of November, 1832; PRECEPT of CLARE CONSTAT by the said James Johnston and the pursuer, for infefting themselves as nearest and lawful heirs of tailzie and provision to the said William Halcro, in the said island, lands and others, dated the 15th day of January 1833; INSTRUMENT of SASINE following thereon in their favour, bearing date the 15th, and recorded in the particular register of sasines, &c. at Kirkwall, the 17th days of January 1833; PROCURATORY of RESIGNATION *ad remanentiam* by the said James Johnston and the pursuer, in their own favour, bearing date the 21st day of January 1833; and INSTRUMENT of RESIGNATION *ad remanentiam* following thereon in their favour, bearing date the 21st, and recorded in the particular register of sasines, &c. at Kirkwall the 22d days of January 1833; By all which deeds the said James Johnston and the pursuer acquired a good and undoubted right and title to the said lands and estate contained in the said disposition and deed of entail: That in order to divide and apportion the said lands and estate, and vest the re-

spective share or shares of each in his own person, by separate fee-simple titles, and in implement, *inter alia*, of an agreement entered into in the year 1800, between the said deceased Margaret Halcro and the pursuer, under which their respective shares of the said estate have been since separately possessed, the said James Johnston and the pursuer, in the year 1837, mutually granted dispositions to each other of certain parts and portions of the same, corresponding to the proportion of two thirds to the said James Johnston, and one third to the pursuer, according to their respective rights and interests therein as before mentioned: That, in particular, by disposition, bearing date the 13th day of April 1837, made and granted by the said James Johnston and the pursuer the said Thomas Sands, as heritable proprietors *pro indiviso* of the foresaid lands and estate, they alienated, dispooned, and conveyed from them, their heirs and successors, as well of tailzie as of line, to and in favour of the said Thomas Sands, pursuer, and his heirs and assignees whomsoever, heritably and irredeemably, the several parts and portions thereof after described, corresponding to one third part or share of the foresaid lands and estate, as possessed by the pursuer and his tenants therein, viz. All and Whole the foresaid lands of Skegibister, All and Hail the lands of Lerquoy and Ingamire, All and Hail the lands of Aikers, All and Hail the lands of Gairy, the one penny land of Midhouse, the house and lands of Breckney, the one penny land of Soulis, the lands of Swanbister, called Stove; together with the following houses upon the ground of the said several lands, known by the names and appellations following, viz. Newbigging, Muse, Evie, Grind, Windwalls, Cott of Aikers and Forkers, Outbreck on the Back of Swanbister, with the parsonage and vicarage teinds of the said whole lands included; together likewise with the kelp-shores of Ranganoust and Toyness, bounded on the south-west by the Binks of Bearnorie, and Smogro on the east, being most contiguous to the said lands in the said town of Swanbister, and equal to one third of the kelp-shores of the said whole estate of Cowbister, (but reserving to the said James Johnston of Cowbister, and his heirs and successors, the privilege of taking ware from the shores of Toyness and Piggar for his two farms of Piggar, according to use and wont), and with the whole houses, office-houses, biggings, yards, mosses, muirs, meadows, outbrecks, onsets, annexis, connexis, commons, commonties, com-

Conveyance to the
pursuer of his separate
third share of
the estate.

mon pasture, parts, pendicles, quoys, quoylands, cotts, cottages, and haill other righteous privileges and pertinents thereof, all lying in the said town of Swanbister, parish of Orphir, mainland and sheriffdom of Orkney; together with that portion of the lands, inclusive of that part of the Fidge of Piggar lying on the east side of a straight line running from that point of the head or cliff called the Binks of Bearnorie, where there is a passage down the rock frequented by fishermen, to the south side of the mouth or outlet of the burn of Fidge, usually called the Hubbing, at the stepping stones over the same, with the whole kelp-shores, bounded as herein before described, and the privilege of free ish and entry to and from Toyness, and of cutting coal-peats from the moss of Toyness, according to use and wont: But reserving to the said James Johnston and his foresaids the right, as exercised by him and his predecessors, of cutting and carrying away coal-peats from the said moss of Toyness, and under the other reservations and conditions contained in the said disposition; together with all right and title which they, the said James Johnston and the pursuer, joint proprietors *pro indiviso* of the said several lands and others, with the teinds and pertinents thereby disponed, or either of them, their predecessors and authors, heirs and successors, had, or could claim or pretend thereto, in all time coming: On which disposition the pursuer was infest in the said several lands and others, conform to instrument of sasine in his favour, bearing date the 25th day of September, and recorded in the Particular Register of Sasines for the shire of Orkney, at Kirkwall, the 4th day of November 1837: That the said disposition and deed of entail contains no exclusion of heirs-portioners from succeeding to the said lands and estate thereby disponed, but, on the contrary, such succession is expressly recognised and directed, and has actually opened to such heirs-portioners, in respect that, by the death of the said William Halcro the institute, without heirs of his body, and there being no other heirs-male or female of the body of the entailer, the succession to the said lands and estate opened to the entailer's sisters, the said Margaret and Cicilia Halcro, and to the pursuer, only son of the said Mary Halcro, as heirs-portioners at law, whereby the said entail thereof has come to an end: That the said disposition and deed of entail is moreover anomalous, inconsistent, and defective, in the following respects: viz. *First*, In the destination of the said lands and estate therein

Subsumption.

contained, by the substitution of the heirs of the body of the said William Halcro the institute, and the heirs-male or female of the body of the entail, the said Dr Hugh Halcro, and particularly by the substitution of the entail's sisters, the said Margaret, Cicilia, Jean, and Mary Halcro, and the heirs of their bodies, but without any provision in case of the succession of heirs-portioners of the said William Halcro, or of the entail, or those of the entail's said sisters and their descendants, by the usual and necessary clause in all deeds of entail, declaring that the eldest heir-female, excluding heirs-portioners, should always succeed, without division, throughout the whole course of succession: *Second*, The prohibitory, irritant, and resolute clauses of the said deed of entail are so worded and expressed, as to apply and be effectual against such heirs only who are under the destination thereof, entitled to succeed to, and hold the said lands and estate as a *whole* and undivided property; and upon the succession of the said Margaret Halcro, and Cicilia Halcro, and of the pursuer, the said Thomas Sands, the heir and representative of the said Mary Halcro, as heirs-portioners substituted by the said deed of entail, the said prohibitory, irritant, and resolute clauses became inapplicable and inoperative against them, and their descendants succeeding to them in their respective shares or proportions of the said lands and estate, the said deed of entail resolving thereafter into a simple destination of the said lands and estate, in favour of them and the other heirs therein mentioned: *Third*, The clause in the said deed of entail, whereby the entail's sisters, the said Margaret, Cicilia, Jean, and Mary Halcro, in the event of their succession to the said lands and estate, are empowered to sell to each other the whole, or any part of the shares that should fall or belong to them, is a special exception in their favour from the said prohibitory clause of the said deed of entail, (in so far as they are thereby prohibited to sell or dispose of the said lands and estate), and in virtue of which they might lawfully convey to each other their respective shares or proportions of the said lands and estate, or any part thereof, for a price or other consideration in any way they might think proper,—in respect the said deed of entail does not, in express terms, provide that such shares, or parts thereof, when sold in virtue of the said clause, shall be conveyed and held under the fetters imposed by the said deed of entail, and in no respect regulates the mode of

carrying such sale or sales into effect, nor does it exclude the purchaser from being a creditor for the price, and having all the other legal rights and privileges over the part and portion acquired by him: And the power thus conferred upon his sisters by the entail, the said Dr Hugh Halcro, is such as by law passes to the heirs of their bodies succeeding to and representing them in their respective shares or proportions of the said lands and estate: That the said disposition and deed of entail contains no effectual prohibition against altering the order of succession to the said lands and estate thereby established: That the said disposition and deed of entail being in itself so anomalous, inconsistent and defective, and not being so framed as specially required by the Act of the Scottish Parliament 1685, c. 22, intituled, 'Act concerning Tailzies,' nor such an entail as was contemplated or intended to be sanctioned by the same, is neither a legal, valid, nor binding entail of the said lands and estate therein contained: That, therefore, upon all, or one or more of these grounds, the pursuer is entitled to do, exercise, and perform every act and deed, faculty and power, relative to his said third share or proportion of the said lands and estate, in the same manner, in all respects, as if he were proprietor thereof in fee-simple; or to alter the foresaid order and course of succession appointed by the said disposition and deed of entail; or at least to do, exercise, and perform such acts and deeds, faculties and powers as Our said Lords shall find competent to and in the power of the said pursuer: That with a view of ascertaning, by a decret of Our Lords of Council and Session, the nature and extent of the powers which the pursuer has over and relative to his said third share of the said lands and estate contained in the said disposition and deed of entail, he has instituted the present action of declarator against all the heirs of entail now in life, entitled to succeed to his said third share under the said deed: And, therefore, Robert Halcro Sands, now or lately residing at Swanbister in Orkney, only son of the deceased Robert Sands, eldest son of the pursuer, the said Thomas Sands; Alexander Watt Sands, mariner, at present abroad; Isabella Sands or Moncreiff, spouse of Hector Moncreiff of Howton, residing in Kirkwall, and Mary Halcro Sands, residing at Swanbister, the remaining three children of the pursuer; and the said Hector Moncreiff, husband of the said Isabella Sands, for his interest; Margaret Sands or Minto, sister of the pursuer, now or lately residing in London, relict of the deceased George Minto, shipmaster,

Object of the action.

Heirs of entail called as defenders.

and George Minto and Thomas Minto, sons of the said Margaret Sands and George Minto ; Mary Minto or Nichols, wife of John Nichols, now or lately mate of the ship Carlisle of the port of Sunderland, and the said John Nichols her husband, for his interest, and George Nichols, Margaret Nichols, and Jane Nichols, children of the said Mary Minto and John Nichols, all defenders ; being the whole heirs of entail, so far as known to the pursuer, at present in existence, called to the succession to the pursuer's third part or share of the said lands and estate, by the said disposition and deed of entail ; and the tutors and curators of such of them as are minors, if they any have, for their interest, Ought and Should be Convened as defenders before Our said Lords of Council and Session ; and it OUGHT and SHOULD be FOUND, DECERNED and DECLARED, by decree of Our said Lords of Council and Session, that in respect the disposition and deed of entail before recited does not exclude heirs-portioners from the succession to the said lands and estate, but, on the contrary, expressly recognizes and directs such succession, the pursuer, as representing the said Mary Halcro as aforesaid, has succeeded to, and is entitled to hold, enjoy, and possess his foresaid third part or share of the same before described, as an heir-portioner ; and that the said entail is now at an end, and of no farther force or effect ; and that the said third part or share of the said lands and estate, the succession and right to which devolved upon the pursuer, as the heir and representative of the said Mary Halcro, now belongs in fee-simple to the pursuer as aforesaid, free from all the fetters and limitations of an entail ; and that the pursuer is entitled to the same rights and remedies for dividing and apportioning the said lands and estate, and for vesting his said third share or proportion thereof in his own person by separate titles, as by law are competent to heirs-portioners in a fee-simple succession, and as has been done in manner foresaid by the conveyance in the pursuer's favour before recited ; and that the pursuer is entitled to sell and alienate the same, onerously or gratuitously, to contract debt thereon, and to alter the succession thereto ; and, generally, to do, exercise, and perform every act and deed, faculty and power, relative to his said third part or share of the said lands and estate before described, in the same manner, and in all respects, as proprietor thereof, in fee-simple : And that the defenders, or

Conclusions.

any of them, have no claim or demand, of any description, against the pursuer or his heirs or representatives, for, or in respect of, the doing or exercising any such act or deed, faculty or power aforesaid: *Secundo*, In the event of Our said Lords finding that the pursuer's third part or share of the said lands and estate is still subject to the fetters and conditions imposed by the said disposition and deed of entail, it OUGHT and SHOULD be FOUND and DECLARED, by decree foresaid, that there is no valid and effectual prohibition operating on the pursuer, as a heir-portioner in possession, from altering the order of succession appointed by the said disposition and deed of entail, and that the pursuer has full and undoubted right and power to dispoise and convey his said share or proportion thereof, in favour of such heir or heirs as he may think proper to call to the succession of the same; and that the defenders, or any of them, have no claim or demand of any description against the pursuer, or against his heirs and representatives, for, or in respect of such alienation, or disposal of his said third share of the said lands and estate, or any part thereof: And in case of the defenders, or any of them, appearing and unduly opposing the pursuer in obtaining decree to the effect foresaid, they OUGHT and SHOULD be DECERNED and ORDAINED, by decree foresaid, to make payment to the pursuer of the sum of £100 Sterling, or such other sum, less or more, as Our said Lords shall modify as the expenses of the process, besides the dues of extracting the decree to follow hereon, all conform to the laws and practice of Scotland, used and observed in the like cases, as is alleged.—OUR WILL IS HEREFOR, &c.

Dated and signeted 5th July 1843.