disburser, was entitled to receive payment of past aliment as up to November 1878; but (2) that she was not entitled to sue for future aliment in name of a *minor pubes*, who was *sui juris*, and might leave her and choose her own residence.

Counsel for Pursuer (Appellant) — Nevay— Agent—J. Watson Johns, L.A.

Counsel for Defender (Respondent)—Balfour—Rhind. Agent—Wm. Officer, S.S.C.

Thursday, October 31.

SECOND DIVISION.

[Lord Young, Ordinary.

LORD ADVOCATE *v.* SHARP.

Fishings — Crown—Salmon-Fishings ex adverso *of Coast — Right of Access to Lands of adjoining Proprietor.*

In a question between the proprietor of salmon-fishings in the sea and the proprietor of the lands, *ex adverso* of which they lay, *held* that the former was entitled to have access for the purposes of his fishings to and from the sea-shore through the lands, in so far as reasonably necessary to the due and proper possession of the fishings and the exercise of the rights of fishing incident to the property thereof, but in the way least prejudicial to the proprietor, and to use the foreshore, beach, and waste lands adjoining for the purposes of his business, and that such a right of access was not capable of being lost *non utendo*.

This was an action of declarator, raised by the Lord Advocate, on behalf of the Commissioners of Woods and Forests, against Adam Sharp of Clyth, in the county of Caithness. The summons sought to have it declared that "the salmon-fishings in the sea *ex adverso* of the lands of Clyth, in the parishes of Latheron and Wick, in the county of Caithness, the property of the said Adam Sharp, belong to us *jure coronæ*, and form part of the hereditary revenues of the Crown in Scotland falling under the management and control of the said Commissioners of our Woods, Forests, and Land Revenues; and . . . that in the exercise of the right of salmon-fishing we, and all in our right, are entitled to have access to and from the sea and sea-shore through the lands of Clyth . . . in so far as is necessary for the full beneficial use of the right; and . . that we and all in our right are entitled in the exercise of the right of salmon-fishing to use the foreshores, beach, and waste lands adjoining the same upon the lands of Clyth for the purpose of drawing and drying the salmon nets, and also to use shores, piers, roads, and paths at Occumster and also at Whalligoe, upon the lands of Clyth, as accesses from the sea to the public highway leading from Wick to Dunbeath, or to use for the purposes foresaid such other roads or paths through the lands of Clyth as may be fixed." The estate of Clyth, the salmon-fishings *ex adverso* of which had in 1875 been claimed by, and admitted by the defender to belong to, the Crown, extended for about six miles along the sea. In that distance, owing to the rocky character of the coast, there were only three places, all of them on the estate, at which salmon could be landed after being caught—(1) Occumster, one mile to the north-east of Lybster, where there was a public harbour; (2) Clyth, a mile further to the north-east; and (3) Whalligoe, five miles further north-east. The public harbour of Wick was seven miles north-east of Whalligoe. In 1873 Mr Sharp had let the fishings to Mr Stephen, fishcurer, who had then established fishing stations at Occumster and Whalligoe, and after the Crown had made good their right to them they had been let to the same tenant, the Crown being unable to come to terms with Mr Sharp, who had himself desired a lease.

The pursuer averred, *inter alia*—"The stations established at Occumster and Whalligoe are the only points at which the Crown right of salmon-fishing *ex adverso* of Clyth estate lands can be profitably worked. This said right cannot even at these points be profitably exercised without the use of the foreshore, beach, and waste lands adjoining, as well as of the shores and piers at Occumster and Whalligoe, and the roads and paths upon the lands leading from the landing-places to the public highway between Wick and Dunbeath. These and Clyth are the only available accesses from the sea to the high road along the whole estate of Clyth."

He further averred that the use of the foreshore was necessary for drawing and drying the nets, and it was admitted that while Stephen was the defender's tenant, he had used the roads and paths mentioned for access and for conveyance of the salmon to the public road, and he had continued to do so afterwards. It appeared that Whalligoe was an artificially constructed stair, cut in the rock, and that a road led from the top of it to the public road. There were two benches there, one forming the access to and from the sea, and on the other the nets were dried.

The defender, *inter alia*, averred—"The private harbours, piers, roads, and net-grounds were originally constructed for the purposes of the herring fishery, and have been let by the defender and his predecessors for the payment of a reasonable rent. They have never been made use of by anyone except the proprietor and his tenants, or persons to whom he has granted permission to use them. Owing to the storms which are frequent on the coast in question, the cost of maintainance is very heavy. The defender is willing to allow the Crown tenant to make use of the said private roads, piers, and net-grounds for payment of a reasonable charge."

The fishing, it appeared, was carried on by stake-nets and bag-nets, and the nets were set on either side of the stations, in some instances from half-a-mile to a mile from the landing places on either side.

The pursuer pleaded, *inter alia*—"(2) The Crown, as owner of the salmon-fishings in the sea *ex adverso* of the defender's said lands and estate, and all in right of the Crown, are entitled to such use of the lands of Clyth for access and otherwise as is necessary for the beneficial exercise of their right. (3) In particular, the Crown and all in right thereof are entitled to the use of the defender's waste lands, and his shores and roads at and leading to and from Occumster and and Whalligoe stations, for drawing and drying their salmon nets, and also for landing and re-

moving the salmon, and for access to these stations, including the use of the shores, piers, roads and paths in question in so far as necessary for these purposes."

The defender pleaded, *inter alia*—"(1) The pursuer is not entitled to decree as concluded for, in respect that the Crown has never possessed or exercised any right or access to the sea by or through the defender's lands, and has not in fact enjoyed the use of the said private roads, piers, and net-grounds in the exercise of any right of salmon-fishing. (2) Assuming that the Crown has right to the salmon-fishings *ex adverso* of the defender's lands, the Crown and its tenants have no right or title to use the defender's lands, or the roads, piers, net-grounds, or sea-shore forming part thereof, for the purposes set forth in the summons and condescendence."

The Lord Ordinary (YOUNG) pronounced the following interlocutor:—

"*Edinburgh, 15th November* 1877.—The Lord Ordinary . . . Finds and declares that the salmon-fishings in the sea *ex adverso* of the lands of Clyth specified in the summons and record belong to Her Majesty *jure coronæ;* and that, in so far as may be reasonably necessary to the due and proper possession of said fishings and the exercise of the rights of fishing incident to the property thereof, Her Majesty and those in her right are entitled to have access to and from the sea and seashore through the said lands of Clyth by such road or path or by such way and in such manner as may be least prejudicial to the defender as proprietor of said lands, and those who occupy and possess the same in his right, but consistent always with available and reasonably convenient access and passage to and fro for the purpose of the fishings; and also to use the foreshore, beach, and waste land adjoining for the purpose of drawing and drying the salmon nets: To this extent repels the defences," &c.

"*Note.*—The defender does not claim the salmon-fishings or dispute that the right to them is in the Crown. His contention is, that as they cannot be availably possessed or the right exercised without taking a servitude use of his property, which has (he maintains) been lost *non utendo*, the Crown ought not to have declarator of a barren right. The foundation of this contention necessarily is that the right of access to a river or to the sea, and to use the banks or beach as an accessory and incident of a right of salmon-fishing, may be lost *non utendo*, to the effect of practically extinguishing the right of fishing itself. I am of opinion that this foundation is unsound in principle and on authority, and I have therefore decided in favour of the right and its incidents substantially as urged by the Crown, although with such limitations and qualifications as seemed to me necessary to guard against any abuse to the detriment of the defender's property. I have endeavoured to express the judgment so that the parties, if willing to avoid collision and further conflict, may govern their conduct towards each other by reference to its terms, without again moving judicially in the case. It is, however, open to either party to move with reference to any special matter of controversy, should such arise. I think leave to reclaim is not necessary, but if it is, I hereby grant it."

The defender reclaimed, and argued—Salmon-fishing was truly a *separatum tenementum*, and rights over adjoining lands could be prescribed in connection with it, but that required possession—*Kinnoul* v. *Keir*. This was a very peculiar right, not like that of a servitude which could be lost *non utendo*, but rather like a right of access to property. Here more was claimed. For instance, a right to dry-nets, &c.—*Nicol* v. *Blaikie*, *Miller* v. *Blair*, *Berry* v. *Wilson*, *Forbes* v. *Kintore*. If this right as claimed was a servitude, it was capable of extinction *a non utendo*, but, on the other hand, if it was an incident of property, then the Crown must show that they retained it. All that was sought in a former case—*Lord Advocate* v. *Agnew*—was a public right of fishing. Here there was a right claimed which formerly never existed; there was not any reserved right in the matter at all. The analogy of a river did not apply, for there a burden, the same everywhere, was created not by grant, but by usage. This right was new and unheard of. The Crown must make it out, and for it they had no authority.

Argued for the Crown—Salmon-fishing in the sea was a *patrimonium* of the Crown—*Gammell*. As to the right claimed, it was laid down that use and access were incident of and not servitudes over property—*Swan* v. *Muirkirk Iron Company*. A servitude could not be lost *non utendo*, for it was *res meræ facultatis*. The Crown had as much right to use the coast for sea salmon-fishings as an owner of salmon-fishings on a river had to use the banks though they belonged not to him. No doubt direct precedent was awanting, but river fishings were analogous. These rights now claimed were pertinents of lands, and excepted from the grant of them; they formed a natural burden on the property *ex adverso* of the fishings. The novelty of the mode of fishing in the sea did not signify. It was much the same as if a mine of gold previously unknown were discovered—*Colquhoun*.

Authorities—Erskine, ii. 6, 15, and ii. 9, 37; *Matthew* v. *Blair*, 1612, M. 14,263; *Forbes* v. *Monymusk*, M. 14,264, and M. 10,840; *Duke of Sutherland* v. *Ross*, June 11, 1836, 14 S. 960; *Kinnoul* v. *Keir*, January 18, 1814, F.C.; *Nicol* v. *Blaikie*, December 23, 1859, 22 D. 335; *Miller* v. *Blair*, November 22, 1825, 4 S. 214; *Berry* v. *Wilson*, December 1, 1841, 4 D. 139; *Forbes* v. *Kintore*, May 31, 1826, 4 S. 650; *Gammell* v. *Commissioners of Woods and Forests*, March 6, 1851, 13 D. 854, H. of L. 3 Macq. 463; *Swan* v. *Muirkirk Iron Company*, February 1, 1850, 12 D. 622; Phear on Water Rights, 70-71, note 8; *Colquhoun* v. *Paton and Others*, June, 17, 1859, 21 D. 996; Bell's Principles, 667-671; Stair, ii. 3, 60; *Agnew* v. *The Lord Advocate*, Jan. 21, 1873, 11 Macph. 309.

The case was, "in respect of its novelty and importance," ordered to be reheard before seven Judges, and the defender was by that Court allowed an opportunity of amending the record. He asked leave to amend to the extent of averring, *inter alia*, "that it is practicable to carry on the salmon-fishing at the points in question without obtaining access to the shore through the estate of Clyth, and without making use of the shore beach and waste lands adjoining for drawing or drying nets, or for any other purpose except for fixing the shore-end of the leaders of the bag-nets. Further, explained that according to the mode of fishing at present in use, and which

alone is practicable at the points in question, nets are not drawn on shore, but are emptied into the boats in deep water, and that there is sufficient access by boat from Lybster and Wick to enable the fishing to be carried on." "It is however, admitted that at present the right could not be exercised so profitably as to unable the Crown to secure a tenant without access through the lands of Clyth, and without some use of the foreshore, beach, and waste lands adjoining for the purpose of drying the salmon-nets and for fixing the shore end of the leaders." He added these pleas—"(4) The pursuer is not entitled to have decree as concluded for, in respect that it is practicable to carry on salmon-fishing at the points in question without access to and from the sea and sea-shore through the defender's estate, and without using the foreshores, beach, and waste lands adjoining for the purpose of drawing and drying the nets. (5) The Crown is not entitled to use the private property of the defender for the purpose of making profit out of a right which can be exercised without such use. (6) At all events the Crown is not entitled to use the defender's property except upon condition of paying the defender a reasonable sum towards the cost of forming and maintaining the accesses and other works used by them." The pursuer amended by a denial, and the record was closed of new, and both parties allowed a proof of their averments.

Subsequently a joint-minute of admissions in the case was put in, to the following effect—"(2) That salmon could be caught in the course of the season *ex adverso* of the defender's lands by use of the sea access by boat from Wick and Lybster, without making use of the defender's property, but not nearly so many as could be caught by making use of the defender's property in the manner claimed. (3) That the fishing would be attended with very great risk to those engaged in it if they were not allowed the access claimed, owing to the nature of the coast and the stormy weather which is frequent there. (4) That without the accesses and uses claimed the fishing could not be prosecuted at every tide, but only once in twenty-four hours. (5) That the fishing could not be a source of profit without the accesses and uses claimed."

The diet of proof was then discharged, and the case was decided by the Second Division.

At advising—

Lord Ormidale—Although this case relates in itself to a subject of little value, the principles upon which it depends are important and of wide application. The decision, therefore, now to be pronounced may as a precedent involve large consequences.

It is not and could not have been disputed after the judgment of the House of Lords in *Gammell* v. *The Commissioners of Woods*, 3 Macq. 463, that salmon-fishing in the sea along the shore *ex adverso* of the defender's property is a patrimonial right vested in the Sovereign *jure coronæ* unless it has been parted with by grant to a subject. It is not, however, said that the right has in the present instance been parted with by the Crown in favour of the defender or anyone else.

I take it also to be clear that the right, being proprietory, and not of the nature of a servitude, could not be lost *non utendo*, and that therefore it is not of any relevancy to say that the beneficial enjoyment of it has not been exercised till the lease was granted by the Crown to Mr Stephen in 1875, as referred to in the record. The right therefore, with all its implied incidents and accessorial parts and pertinents, remains entire and unaffected as they have ever been.

In considering whether it is not necessarily incident to the right of salmon-fishing in the sea to have access to and from the shore, with the use of the shore, beach, and waste land adjoining for the purpose of drawing and drying the salmon-nets, it must be borne in mind that without such accessorial rights or pertinents the beneficial use of salmon-fishing in the sea in places such as that in question could not be enjoyed. That this is so is all but expressly acknowledged by the defender in his answers to the pursuer's condescendence, and all doubt on the subject I hold to be removed by the joint-minute for the parties recently lodged in process. It could not, indeed, well be otherwise, for the pursuer is proprietor of the lands for six miles along the stormy coast *ex adverso* of which is the salmon-fishing in question.

Notwithstanding, however, of this, it was contended by the defender that no such accessorial rights or pertinents belong to the Crown in respect of salmon-fishings in the sea, although it might be different as regards salmon-fishings in rivers, and in support of this distinction various authorities were cited, and especially the cases of *Mathew* v. *Blair*, Mor. 14,263; and *Monymusk* v. *Forbes*, Mor. 14,264; *Miller* v. *Blair*, 4 Sh. 214. It is true that these cases related to salmon-fishings in rivers, and to the use of the adjacent banks. But in principle I do not see how any well-founded distinction in this respect can be taken between salmon-fishings in rivers and salmon-fishings in the sea. The necessity of using the adjacent ground is, I rather think, greater in the latter than in the former. Salmon may always be caught in a river—such, for example, as the Tweed—by rod and line from a boat of some kind, as well as from the banks, but such a mode of catching salmon in the sea, or by any method independently of the adjacent land, is, I believe, unknown and impracticable. If therefore, in the exercise of a right of salmon-fishing in a river, the use of the adjacent banks must be held to be an accessory inherent in and necessarily incident to the right itself, I think it must also be so as regards a right of salmon-fishing in the sea. Accordingly, the authorities are, on a correct and fair reading of them, to this effect. Mr Erskine in his Institutes (b. 2. t. 6, s. 15), while he exemplifies the rule by a reference more especially to river fishing and the banks of a river, states the rule itself in such terms as to make it applicable alike to sea fishing, for he puts the case—which is really that here in question—of the party in right of a salmon-fishing having no lands in connection with it, being entitled to use the adjacent grounds "without the proprietor's consent as a pertinent of the fishing." The cases cited on the part of the defender must, I think, be read to the same effect, and not as being limited in principle to river fishing. When a grant of land either on a river or the sea, is taken by a party without any right to the salmon-fishing, he must

know or be held to know that he is exposed to the contingency of the party who has already obtained, or who may thereafter obtain, a grant of the salmon-fishing, asserting a claim to the accessorial rights necessarily incident to such fishing, and therefore when the contingency arises, and such claim is made, he cannot be held to have any well-founded ground of complaint.

The accessories claimed in the present case as being necessarily incident to pertinents of the right of salmon-fishing in the sea are analagous in principle to certain accessories which are inherent in and inseparable from property on the land. Thus, in the words of Lord Stair (b. 2, t. 7, s. 10)—"Free ish and entry are implied in the very right of property although not expressed." Or, in the words of Mr Erskine (b. 2, t. 6, s. 4)—"It is universally admitted that everything which from its close coherence or connection with land is considered as part and pertinent of it, and goes to the vassal as an accessory of the subject contained in the feudal grant." And again (b. 2, t. 6, s. 9)—"But though the ground through which the vassal must necessarily pass should belong to another, and though it should not be subjected to any conventional servitude, the vassal is entitled to free ish and entry, because without it property would be useless. It therefore arises from the rights and obligations essential to property that every proprietor may claim from and afford to his neighbour all necessary ways and passages." It is quite in accordance with this principle that the owner of a right to salmon-fishing in the sea, or in a river, without any lands, should be entitled to the accessorial rights claimed in the present case, so far as necessary for its beneficial use or enjoyment. So, in like manner, would the owner of minerals, held as an estate separate from the superincumbent property, have implied, though not expressed in his title, the accessorial rights of access to and from them necessary for their beneficial use, as illustrated by the case of *Blair* v. *Ramsay* (Oct. 22, 1875, 3 Rettie 25, and H. of L. 3 Rettie 41.) In that case there was, no doubt, a reservation of a right to work and win the minerals, but the general principle, independently of such reservation was distinctly recognised. Thus, Lord Chelmsford in the House of Lords observed—"Now, it appears to me that being upon a grant or reservation of minerals *prima facie*, it must be presumed that the minerals are to be enjoyed, and therefore that a power to get them must be granted or reserved as a necessary incident." And he adds—"As was said by Lord Wensleydale in the case of *Rowbottom* v. *Wilson*, in 8th House of Lords cases, 360—'It is one of the cases put by Sheppard's Touchstone in illustration of the maxim, *Quando aliquid conceditur, conceditur etiam, et id sine quo res ipsa esse non potuit*—that by a grant of mines is granted the power to dig them.'" And in like manner, and on the same principle, it was held in the case of *Swan or Gall and Others* v. *The Muirkirk Iron Company* (1st February, 1850, 12 D. 622) that a right to a navigable canal includes a right to a towing path as a necessary appendage to it.

It appears to me therefore that, on authority as well as principle, the Lord Ordinary has decided rightly in this case, and that his interlocutor reclaimed against ought to be adhered to, especially as it is so expressed as to leave every remedy against abuse or undue exercise on the part of the Crown, or others in its place, of the accessorial rights in question, entirely open, and available to the defender.

Lord Gifford—I am entirely of the same opinion, and upon the same grounds as those which have been so fully explained by Lord Ormidale.

When this case was last heard before the Court it was found that the record was not so complete either in statement or admission as to exclude possible pleas which might arise according to the state of the facts, and accordingly proof was allowed, but parties have superseded the necessity of proof by a joint-minute of admissions. I think we have material in that joint-minute and in the record, of which it now forms part, for the final decision of this case. It is now admitted as part of the facts upon which both parties are agreed, that, while it is possible to work the Crown fishings in question by means of a sea access by boats from Wick and Lybster without making use of the defender's property, still not nearly so many salmon could be caught in that way as by making use of the defender's property in the manner claimed. But further, it is admitted that the fishing with access by sea from Wick or Lybster would be attended by very great risk to those engaged in it if they were not allowed the access claimed, owing to the nature of the coast and the stormy weather which is frequent there. Again, it is admitted that without the access or uses claimed, the fishing could not be prosecuted at any time but only once in the twenty-four hours—that is, every alternate tide—so that upon this single admission alone one-half of its value is gone if the access through the defender's lands is not granted. And then, lastly, it is admitted that the fishing could not be a source of profit without the access and uses claimed.

I think it is quite impossible to read those admissions without coming to the conclusion that unless the Crown or those in its right, its tenants, or those to whom the tenant gives this right of salmon-fishing, obtain access to the fishings by the defender's lands and the other privileges in this summons, the salmon-fishings belonging to the Crown will be absolutely useless and unproductive. The necessary consequence is that it is so. It is possible to catch salmon by means of boats, but it is not possible to have a salmon-fishing which will be profitable for anybody, or capable of being made the subject of useful possession.

Now, if that be so, it comes to this, that the Crown, reserving the salmon-fishing in question, can make no use of it and derive no profit therefrom. For want of accessory rights, the right reserved—and I do not think there is any difference between an implied reservation and an express one—would be absolutely abortive and useless. Now, we have it settled upon authority—the cases referred to by Lord Ormidale make that quite clear—that in the case of salmon-fishing in a river, where the proprietor of the salmon-fishing has no land on the adjoining bank, he is entitled, as an accessory to his right of salmon-fishing, to have the necessary and indispensable access from the bank so as to make the salmon-fishing available. That was settled in the cases which Lord Ormidale referred to—

Matthew v. *Blair*, *Forbes* v. *Monymusk*, and *Miller* v. *Blair*, and the dicta of Erskine and Stair really lead to the same result.

Now, I can draw no distinction between a salmon-fishing in the sea, to which for the purpose of making it available and profitable access must be got through the shoreland, and a salmon-fishing in a river to which it is absolutely necessary to get access by the banks of the stream. The cases are in some respects different, but the principle is precisely the same, and I think the great principle is that which has been enounced by Lord Ormidale, and which follows necessarily not only from the cases in question but from the authority of others, and from the dicta of institutional writers, that when a right is granted—a limited right or a right which requires something accessory to itself in order to its enjoyment—when a right is granted by a proprietor having the accessory rights, he is understood to grant along with it every accessory right which is reasonable and necessary for its enjoyment. Suppose the Crown, originally proprietor both of the land and of the sea salmon-fishings, had given off the salmon-fishings alone, retaining the land, I think it would have followed from the principle to which I have referred that the Crown would have been bound to give the grantee of the salmon-fishings the necessary and indispensable access through the land which was retained by the Crown. Now, I do not think the principle is at all different when the Crown gives off the land but retains the salmon-fishings. The necessary accessory rights of the Crown must be held as reserved along with the salmon-fishings themselves; and this seems to be conclusive of the present case. The admissions contained in the minute show that what is claimed by the Lord Advocate in this case on behalf of the Crown and the Crown's tenant is absolutely indispensable to the beneficial enjoyment of the reserved right. Everything is understood to be conceded along with the grant, without which the grant would be abortive.

Lord Justice-Clerk—I concur in the proposed judgment. I must fairly concede that I do so very reluctantly, because I think that the action of the Crown in this and similar cases lays a new and anomalous burden upon land without any corresponding equivalent; and I further think that the practice of placing stake-nets in the open sea is contrary to the whole spirit, though not prohibited by the letter, of the statutes regulating salmon-fishings for many centuries. Now therein lies the difficulty which I originally felt. The proposition is new, and I think it is also a proposition adverse to the general interests which these statutes were intended to protect. And therein lies the distinction between a salmon-fishing in a river, which never can be exercised in that way, and a salmon-fishing in the sea. But while I had that impression, I think the principle upon which the proposed judgment is to proceed is one which cannot be resisted, and therefore, and without hesitation upon the legal question, I have come to concur entirely with the Lord Ordinary's interlocutor.

The Court adhered.

Counsel for Pursuer (Respondent)—Lord Advocate (Watson)—Ivory. Agent—D. Beith, W.S.

Counsel for Defender (Appellant)—Kinnear—Pearson. Agents—J. & A. F. Adam, W.S.

Friday, November 1.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

BAIRD & COMPANY *v.* SIR W. EDMONSTONE AND OTHERS.

Title to Sue—Tenants under a Mineral Lease—Where they sued Feuars holding of their Landlord as Superior.

Held (*diss.* Lord Deas) that tenants under a lease which gave a right to work the minerals under certain lands "in so far as the landlord has right thereto," had a title to sue an action directed against feuars holding under the landlord as superior, and concluding for a finding that the pursuers had an exclusive right to work and carry away these minerals during the currency of the lease, but to the effect only of requiring the vassals to produce their titles in order to determine the superior's right in the minerals.

Observations upon the difference between such an action and one of declarator of property, and upon the extent to which the former is available.

Property—Right of Commonty—Servitude—Conveyance of Minerals by Feu-Charter.

A feu-charter, after conveying 20 falls of lands within a burgh, proceeded—"Lykeas we, be vertue of the sd contract of allienation, hes sold, annaillzied, and disponed, be the tennor heirof sells, annailzies, and dispones, and in feu ferme and heritage perpetuallie letts and demitts to the said Robert Patrick, his sd spouse, and yr forsds, with the rest of the inhabitants of the sd burgh and toune of Kilsyth (with and under the provisione and conditione contained in the said contract), ane proportionall pairt of our lands of Barrwood with the rest of the inhabitants of the sd burgh as sd is, gress, moss, meadow, and arrable land yrof, effeirand to ane burgess steading of the sd burgh and toune of Kilsyth presentlie possessed be the inhabitants yrof." There was a separate reddendo for the 20 falls and for the proportional part of Barrwood. That for the latter was called "rent" and was not doubled at the entry of heirs. The lands conveyed were discontiguous, but sasine was given "by delivery of earth and stone of and upon the ground of the lands," without its being stated to have been "respectively and successively." *Held* (by the Lord President, Lord Mure, and Lord Shand) that the terms of the charter were sufficient to convey to the feuars a right of common property, and therefore (there being no reservation) a right to the minerals under the lands, and that they did not merely convey a servitude right over the surface.