The case of *Fotheringham's Trustees*—July 2, 1873, 11 Macph. 848—where there were nine beneficiaries, and conversion was held operated, was a very special case, and decided on the ground of practical necessity to convert.

Additional authorities—*Durie*, M. 4624; *Advocate-General* v. *Smith*, 1 Macq. 760; *Gardner* v. *Ogilvie*, Nov. 25, 1857, 20 D. 105.

Argued for second party—Necessity for conversion being a question of intention (Lord Chancellor in *Buchanan* v. *Angus*), the intention of the testator that there should be equal division was plain. The testator directed certain things to be done, and that they might be done gave power to sell.

Authorities — *Blackburn's Trustees*, *supra*; *Williamson* v. *Advocate-General*, Dec. 23, 1850, 13 D. 436, *aff.* 2 Bell's App. 89; *Somerville's Trustees* v. *Gillespie*, July 6, 1859, 21 D. 1148; *Greig* v. *Mackenzie*, Feb. 14, 1868, 6 Macph. 375; *Boag* v. *Walkinshaw*, June 27, 1872, 10 Macph. 872; *Fotheringham's Trustees*, *supra*; *Nairn's Trustees* v. *Melville*, Nov. 10, 1877, 5 R. 128.

At advising—

Lord Justice-Clerk—It is not necessary to recapitulate the authorities which have been so ably gone over and referred to. My opinion in this case is that there is no ground on which it can be held that the testator meant that the property should be kept together, and the plan of his settlement indicates, as well as the reason and convenience of the matter, that he had no such idea. He gives his trustees powers to carry out the deed, and that indicates that without power of sale they could not carry out his intention. Without going more fully into the case, and it being clear that the heritable property was only held as an investment, and that the sum we are dealing with is certainly residue, I think that the circumstances that the direction contemplates payment in money, that there are several beneficiaries, and that the bequest is a bequest of the price of residue, all lead to the result at which I have arrived.

Lord Gifford—I am of the same opinion, and I am led to that conclusion by the nature of the estate—the division into four portions, with the prospect in the testator's mind that some of his children may die before him, and the destination-over to their issue. It is plain that he intended the estate to be paid over in equal shares. No doubt the parties might have agreed to buy an estate in equal *pro indiviso* shares, or in some such way kept up the heritable character of the estate; but, on the whole, I think the estate must be held to have been made moveable by the settlement.

Lord Young—I am of the same opinion, and without difficulty. No case could be more clearly stated or more ably argued than Mr Murray has put this case. The only general rule I can deduce from the authorities is that we should endeavour to collect from the whole instrument what is the intention of the testator. If he leaves heritage and expresses no intention that it be converted into personal estate, it must remain as he leaves it; and so also with personal estate. He may convert by express direction, or by such a will as indicates that that is what he intended. Now, this will indicates that this testator intended his heritable property to be converted and to pass to his children and grandchildren as money. That was his intention. He was a great-grandfather, for Mrs Baird, his daughter, was a grandmother, and if she had predeceased him leaving twelve children they would have taken directly under this will, and it would be a proposition approaching nearly to extravagance to say that he contemplated their taking as heirs in heritage. Any of their children might die before him leaving children, and the plain idea in his mind was one which requires conversion of his estate. As your Lordship has observed, that is the very meaning of the power of sale. He says—"And to enable my trustees to carry out the purposes of this settlement, and of any codicils thereto, I confer upon them all requisite powers, and particularly (but without prejudice to the said generality) to sell my heritable estate in such lots and at such prices," &c., as they may think proper. A sale was plainly requisite to exercise his will, as he expresses it, and that it is the very test of conversion to ask "Is it requisite to the execution of the will?" I think it is necessary here, and I find enough here expressed by the testator to lead to that conclusion when he uses the words "all requisite powers." That is equivalent to "necessary," and "necessary" may be put into the deed instead of it without altering the sense. I am glad to be able to take this view, which certainly leads to an equitable distribution of this estate among the parties competing.

The Court answered the questions as follows:—

"Find that the character of the estate of the testator Robert Watson, as impressed on it by his trust-disposition and settlement, was moveable; and therefore Find (1) That the share of his estate originally destined by his said trust-disposition and settlement to Jane Watson or Baird is moveable, and divisible equally among her issue; and (2) That the children of Robert Watson Baird are entitled to participate equally in the proportion of said share to which he would have had right had he survived the said Jane Watson or Baird, his mother; and decern.

Counsel for First Party—Graham Murray. Agent—J. Gillon Fergusson, W.S.

Counsel for Second Party—Ure. Agent—J. Young Guthrie, S.S.C.

Counsel for Third Party—Rankine. Agent—A. P. Purves, W.S.

Thursday, December 9.

SECOND DIVISION.

CRAIG (INSPECTOR OF ST CUTHBERT'S PARISH) AND GREIG (INSPECTOR OF CITY PARISH) *v.* MAGISTRATES OF EDINBURGH.

Act 42 and 43 Vict. c. 132 (Edinburgh Police and Improvement Act).

A parish had for seventy years been in use to receive as poor-rate under a local and personal Act an annual sum of £300 from the magistrates of a burgh in consequence of the

disjunction of certain lands from the parish and their annexation to the burgh. In a Police and Improvement Act passed at the end of that period, by the provisions of which other lands lying outside the burgh were brought into it, the clauses of the Act under which the payment had been made were repealed. In the repealing Act, however, it was declared that lands within the extended bounds should remain portions of the parishes where they lay, and should not be affected "as regards payment of public and parochial burdens . . . or other parochial arrangements." *Held* that this clause did not affect the repealing clause of the statute as regarded the obligation in question, and that the right to payment was cut off.

Question, Whether such a payment as had been made was legal after the Poor Law Act of 1845?

By various statutes passed prior to 1809, and by the statute 49 Geo. III. c. 21, passed in that year, certain lands in St Cuthbert's parish were disjoined from that parish and annexed to the royalty of the city of Edinburgh, and the Lord Provost, Magistrates, and Council of Edinburgh were authorised to levy the cess, annuity, poor-money, and other duties from the proprietors and occupiers of all houses comprehended in the royalty as so extended. The statute also declared that the ground and houses thereon so disjoined should be freed and relieved for the future of all and every assessment imposed or that might be imposed for the poor of the parish of St Cuthberts. The statute further provided that in consideration of the lands disjoined by its operation from St Cuthberts, the Magistrates of Edinburgh should pay annually to the heritors and kirk-session of St Cuthberts a sum of £200, and in consideration of the lands disjoined by the previous statutes, £100 per annum—in all, £300 per annum. This sum of £300 was regularly paid from 1809 to 1822 by the Magistrates of Edinburgh. From 1822 to 1845 it was paid by the managers of the charity workhouse of Edinburgh, who during that period collected and intromitted with the poors-money of the extended royalty of Edinburgh. From the passing of the Poor Law Act of 1845 till 1879 the sum was paid by the parochial board of the City parish to the parochial board of St Cuthberts, in whom the rights of the heritors and kirk-session of St Cuthberts were vested by that Act. The receipts for payment were all along made to run in name of the Chamberlain of the city of Edinburgh, the Magistrates being under the Act of 1809 the persons on whom the obligation of payment was laid, although payment was really made as stated. This arrangement was one purely between the two parishes interested, and was unknown to the City Chamberlain.

In 1838 an Act was passed to regulate and secure the debt due by the city of Edinburgh to the public, to confirm an agreement between the said city and its creditors, and to effect a settlement of the affairs of the said city and the town of Leith (1 and 2 Vict. c. 55). This Act provided by section 20—"That upon the fulfilment of the arrangement hereinbefore and after mentioned between the said city of Edinburgh and the creditors of the said city (of which the payment of the said sums of two thousand seven hundred pounds and four hundred and eighty pounds, to be applied towards the payment of its creditors, forms a part), all the claims and demands of the said creditors upon the said city, or the property or revenues now belonging, or which may hereafter belong, to the said city shall be, and the same are hereby discharged, extinguished, and annulled." The arrangement is set forth in section 41, which provides—"That it shall be lawful to the said Lord Provost, Magistrates, and Council, and they are hereby authorised and required, to compound for all and every debt due and obligation contracted by them and their predecessors in office prior to the first day of June in the year one thousand eight hundred and thirty-three"—with certain exceptions therein set forth—"Under which exceptions the said debts and obligations shall be compounded by granting, free of all charges and deductions, to all and every person in right of such debts, bonds of annuity in the manner and form hereinafter provided, at the rate of three pounds sterling, payable half-yearly, for every hundred pounds sterling of such debts, and which bonds of annuity all and every person in right of such debts shall accept in full payment thereof."

In 1856 the municipal boundaries of the city of Edinburgh were extended by the Act 19 and 20 Vict. c. 32, section 29 of which was as follows —"The lands within the said extended bounds shall remain parts and portions of the parishes within which they now lie respectively, *quoad omnia*, and shall not in so far as regards the settlement, relief, or management of the poor, the payment of public or parochial burdens which now affect, or which may hereafter affect, the said parishes respectively, or other parochial arrangements, be affected by any of the provisions of this Act; and the teinds or tithes held or payable in respect of the said lands shall be saved and reserved to the true owners thereof."

In 1879 was passed the Edinburgh Municipal and Police Act (42 and 43 Vict. c. 132), section 7 of which declared that from and after the commencement of its operation certain statutes specified, among which was the Act of 1809 (49 Geo. III. c. 21) above referred to, "are by this Act repealed, provided always that the foregoing repeal shall be subject to the reservation of the several sections or portions of sections contained in Schedule A to this Act annexed, in so far as now operative." The sections of the Act of 1809 which related to the payment to be made to St Cuthberts, being the 8th and 10th, were not saved in Schedule A of the Act of 1879, the only sections saved being the 1st, 3d, 5th, 6th and 15th, which had no reference to that payment. The Act of 1879 also in part repealed the Act of 1856, but it contained a clause in almost similar terms to section 29 of that Act above quoted, viz. 24—"The lands within the burgh shall remain parts and portions of the parishes within which they now lie respectively, *quoad omnia*, and shall not, in so far as regards the settlement, relief, or management of the poor, the payment of public or parochial burdens which now affect, or which may hereafter affect, the said parishes respectively, or other parochial arrangements, be affected by any of the provisions of this Act; and the teinds or tithes held or payable in respect of the said lands shall be saved and reserved to the true owners thereof."

The Act of 1879 was obtained by the Magistrates of Edinburgh without any communication with the parochial board of St Cuthberts. In the notices, however, of the Act advertised in the newspapers intimation was given that it was proposed "to repeal the Act 49 Geo. III. c. 21, in whole or in part." St Cuthberts having at Martinmas 1879 been refused payment by the City parish of £150, being the sum usually paid at that term, raised this action against the Magistrates of Edinburgh and the City Parochial Board for declarator, by virtue of the Act 49 Geo. III. c. 21, secs. 8 and 10, that the defenders were bound to pay to St Cuthberts in all time coming the sum of £300 a-year, and for payment of the portions thereof falling due at Martinmas 1879 and Candlemas 1880. Both the Magistrates and the City parish defended the action.

The Lord Ordinary (CRAIGHILL) pronounced this interlocutor:—"Finds (1) That the claim of the pursuers is founded on the 8th and 10th sections of 49 George III. cap. 21; (2) That these sections of said statute, as well as the second, seventh, ninth, and eleventh sections, which were incidentally cited on the part of the pursuers in the course of the argument, have been repealed by the Edinburgh and Municipal Police Act of 1879 (42 and 43 Vict. cap. 132); and (3) That the effect of this repeal upon the claim now sued for is not obviated by any other enactment or provision in the last-mentioned Act or in any other statute: Therefore assoilzies the defenders from the conclusions of the summons, and decerns: Finds the defenders the Magistrates of Edinburgh entitled to expenses of process, and the defender the Inspector of the City Parish of Edinburgh also entitled to his expenses, except those connected with the management of the record," &c.

He added this note—"The Lord Ordinary regrets that he is obliged to come to the conclusion which he has adopted, because it was frankly admitted at the debate by the counsel for the defenders the Magistrates and Town Council of Edinburgh that the extinction of the claim now sued for was not one of the purposes contemplated by the Edinburgh Municipal and Police Act of 1879. This, however, is not a consideration by which, as the language of the statute appears to the Lord Ordinary to be clear, his interpretation of its enactments can be effected, though it may suggest to others the propriety of measures being taken for redress of the wrong which unintentionally has been committed.

"There are two sets of defenders—(1) The Magistrates and Town Council of Edinburgh; and (2) The Parochial Board of the City Parish of Edinburgh; and the declaratory conclusions of the summons, upon which the petitory conclusion depends, is that it should be found and declared that 'By virtue of an Act of Parliament, local and personal, passed in the 49th year of the reign of his Majesty George III. cap. 21, the defenders, the Lord Provost, Magistrates and Council of the City of Edinburgh, and their successors in office, or the other defender, George Greig, inspector of the City parish of Edinburgh, and his successors in office, are bound to make payment to the pursuers, and their successors in office, in all time coming, of at least the sum of Three hundred pounds per annum, payable by two equal instalments at the terms of Candlemas and Martinmas in each year respectively;' and this conclusion is rested, according to the first of the pursuers' pleas, upon sections 8 and 10 of the 49th of George III. cap. 21, being the statute particularised in the conclusions of the summons. There is no other ground of action libelled.

"Several defences have been stated, but that defence which is common to both sets of defenders is that the clauses founded on as grounds of action have been repealed, and consequently that the right of the pursuers and the liability of the defenders have been extinguished; as shown by the foregoing interlocutor, the Lord Ordinary considers that this plea must be sustained.

"There is no doubt whatever that the 8th and 10th sections of 49 George III. cap. 21, have been repealed, because the 7th section of the Edinburgh Municipal and Police Act 1879 declares that from its commencement, which was the Friday following the first Tuesday of November 1879, the statutes therein specified, among which is the 49th of George III. cap. 21, 'are by this Act repealed, provided always that the foregoing repeal shall be subject to the reservation of the several sections or portions of sections contained in Schedule A to this Act annexed in so far as now operative.' None of the clauses founded on are protected by this reservation. Sections 1, 3, 5, 6, and 15 are the only clauses which have been saved.

"Section 11 of this statute, by which it is enacted 'That the magistrates and council may enforce against any person, and any person may enforce against the magistrates and council to the same extent and effect as might have been enforced by or against the magistrates and council if this Act had not been passed, all Acts of Parliament and provisions of Acts other than those hereby repealed, conferring any right on the magistrates and council, or on such person or his predecessors,' must also be taken into account. It seems to imply, and probably was intended to imply, that the effect of the clauses repealed was not to be kept up by clauses by which according to a reasonable interpretation another purpose was to be or could be served.

"Be this, however, as it may, it appears to the Lord Ordinary that there is no other provision in the Edinburgh Municipal and Police Act 1879 by which the clauses of 49 George III. cap. 21, founded on by the pursuers, have been preserved. Several sections, indeed, were referred to in the argument for the pursuers, by which it was said that the effect of the repeal had been obviated, the one chiefly relied on being the 24th, by which it is enacted—'That the lands within the burgh shall remain parts and portions of the parishes within which they now lie respectively, *quoad omnia*, and shall not as regards the settlement, relief, or management of the poor, the payment of public or parochial burdens which now affect or may hereafter affect the said parishes respectively, or other parochial arrangements, be affected by any of the provisions of this Act.'

"The Lord Ordinary, however, is of opinion that the effect on the claim sued for of the repeal by section 7 is not counteracted by anything to be found in other sections of the statute. Section 24, while it may preserve arrangements by which lands within the burgh are affected, does not touch, as he thinks, such obligations as those which are sought to be enforced in the present action. These lands are to remain subject to

burdens which had been previously imposed, but it is no part of case of the pursuers that any lands whatever were burdened with the obligation which was constituted by the clauses of 49 George III. cap. 21, that are the grounds of the present action."

St Cuthberts reclaimed, and argued—That though the sections under which the payment was ordered to be made were not among the clauses of the Act of 1809 reserved from the repeal, the payment was a "parochial arrangement" in the meaning of section 24. Such a construction of section 44 was more reasonable than to hold that by an Act passed for a purpose quite unconnected with the subject of this payment the right to payment had been taken away from St Cuthberts, while the lands disponed, which yield far more poor-rate than £300, had not been restored. The City Debt Arrangement Act was not intended, and was not fitted, to cut off a continuing liability such as this. The Act of 1845, founded on by the City parish for the purpose of showing that since that Act parochial boards were prevented from applying the funds raised for relief of the poor to any purpose whatever outside the parish, was a general Act, not intended to cut off special statutory rights like that in dispute here unless specially mentioned.

At advising—

LORD JUSTICE-CLERK—I have formed a very clear opinion on this question, in which I understand your Lordships concur. Certainly if we were to go into matters which are not really within our cognisance in this case, it would be attended with more difficulty. At the outset it did not seem to me that the question was one of so much ease. It appears remarkable that payment of £300 which has gone on for so long a period of time should have been repealed without any direct communication with the parties entitled to it. But so it is that the statute of 1879 repeals the statute under which that payment has been made, and the only thing of great weight said in support of the opposite contention is, that there was a general clause of reservation, namely clause 24, conceived in terms of considerable generality and ambiguity, the effect of which was said to be to repeal the repeal—that is, to exempt from the repealing clause the clauses of 49 Geo. III. c. 21, founded on by the pursuers, providing for the payment by the City parish, or by the town with relief against the City parish, to the parish of St Cuthberts of the sum of £300 per annum. But I do not think it necessary to go into the opinion I have formed as to the position of the parties with reference to the facts of this case. I have come to the conclusion that the 24th clause has no reference to or bearing on these matters at all, and that being so, the clause of repeal is entirely unqualified. Whatever redress the unsuccessful party may have, it is not for us to say. I must say that at first sight I was struck with the words of the 24th section. It was not easy to see to what particular provisions they applied. I saw the difficulty of holding that they exempted from the repeal the bulk of the statute which had been the subject of the repeal. Certain clauses were specifically exempted from repeal by the statute itself, and if in addition to these all the other clauses affecting the parochial arrangements had been exempted from repeal, hardly anything would have been left for this clause to affect. But I have come to the conclusion that the meaning of that section is not doubtful at all. It provides—"That the lands within the burgh shall remain parts and portions of the parishes within which they now lie respectively, *quoad omnia*, and shall not as regards the settlement, relief, or management of the poor, the payment of public or parochial burdens which now affect or may hereafter affect the said parishes respectively, or other parochial arrangements, be affected by any of the provisions of this Act." Now, that is said to apply to all the clauses in the repealed statute which in any way relate to the settlement, relief, or management of the poor, or the payment of public burdens or other parochial arrangements. It is contended that the payment of £300 a-year by the City parish to St Cuthberts is a parochial arrangement, and that therefore it is saved from the repealing clause.

Unquestionably, if anything had been found in the Act of 1879 by which without this 24th section there might have been an interference with parochial arrangements, I should have found it difficult to say that that clause had not some application which these words did not directly infer, but which it might be contended was the only application that they had. But when I find that the Act of 1856, which certainly made an alteration upon the limits of the town, and which brought into the municipality lands beyond the former boundary—that that Act is repealed by the Act of 1879—its clauses so far as intended to subsist being re-enacted—and that the Act of 1879 brings into the municipality lands which after the Act of 1856 was repealed were to form the true boundary, the whole thing becomes very clear. The 24th clause is just a transfer applicable to these clauses in the Act of 1856 which are re-enacted by the Act of 1879, and therefore intended to modify a possible defect which by the Act of 1879 re-enacting that part of the Act of 1856 would have been produced. Having come to that conclusion, I am of opinion that the 20th section does not exempt, and was not intended to exempt, the particular clauses founded on from the repealing provisions contained in the Act of 1879. I think that is sufficient for our judgment. If this question had been stirred before, there might have been another question decided, or at all events considered, namely, whether after the settlement of 1838 the town was bound in this direct debt to the parish of St Cuthberts? I think it is a fair question whether it remained after that date. I do not think it quite clear that this was a debt charged only against the City parish poor-rate, still less that it was charged on the particular part of the City parish which had been disjoined from the parish of St Cuthberts.

In the second place, I have very great doubt whether under the Poor Law Act of 1845 St Cuthbert's parish was entitled to make this claim. That, however, is a matter on which we do not need to express any opinion. The continued payment of £300 a-year was certainly a great obstacle in the way of treating these considerations with effect, and I am glad to be relieved from the necessity of deciding on that matter. The result is that these clauses founded on for the payment in question have been repealed. Consequently no claim can be made.

LORD GIFFORD and LORD YOUNG concurred.

The Court adhered.

Counsel for St Cuthberts—Solicitor-General (Balfour, Q.C.)—Burnet. Agent—J. M'Caul, S.S.C.

Counsel for City Parish—Dean of Faculty (Fraser, Q.C.)—J. A. Reid. Agent—Curror & Cowper, S.S.C.

Counsel for City of Edinburgh—Lord Advocate (M'Laren, Q.C.)—Mackay. Millar, Robson, & Innes, S.S.C.

Friday, December 10.

SECOND DIVISION.

STUDD *v.* STUDD'S TRUSTEES AND OTHERS.

Succession — Settlement Couched in Technical Terms of Foreign Law—Titles to Lands Consolidation (Scotland) Act (31 *and* 32 *Vict. c.* 101), *secs.* 19 *and* 20.

An Englishman having heritable property both in England and Scotland, executed an English deed whereby he directed his estates, including his estate in Scotland, to be settled on his son and a series of heirs, according to the conditions and restrictions of an English settlement in tail male. *Held* that this direction should receive effect, that effect being, in terms of Scottish conveyancing, as agreed upon by the parties, to confer a liferent only of the estate in Scotland on the testator's son, with a destination in fee to the heirs-male of his body and the persons called in the deed of direction—*diss.* Lord Justice-Clerk, who held that the restrictions of an English settlement in tail male could not be made to affect the estate in Scotland, and that that estate must be held to be undisposed of, and therefore fall to the testator's eldest son in fee-simple as heir-at-law.

Major-General Edward Mortlock Studd of Oxton, in the county of Devon, died on 6th October 1877 leaving a last will and codicil dated in April and December respectively of the same year, and registered in the district registry attached to the Probate Division of the High Court of Justice at Exeter the 19th January 1878, whereby he appointed his widow Emma Bayly or Studd, Frederick Joliffe Bayly, and Edward Osborn Williams to be his trustees. Major Studd was a domiciled Englishman. Some years before his death he had acquired the lands, teinds, and shooting estate of Banchor in Inverness-shire. His will contained this clause:—"I devise all such and such parts of my manors, messuages, lands and hereditaments, situate in the counties of Devon, of Inverness in Scotland, of Stafford, and of Warwick, and of my estates called The Four Dwellings, The Quinton, and The Farm at 'Bell End,' whether in Worcestershire or Staffordshire, or elsewhere, as consist of freehold of inheritance (which several hereditaments are hereinafter called 'Edward's Freehold Estate'), to the use of my elder son Edward Fairfax Studd and his assigns, for his life, without impeachment of waste; and after the death of the said Edward Fairfax Studd, to the use of the first and every other son of the said Edward Fairfax Studd successively according to their respective seniorities in tail male, with remainder to the use of my trustees during the life of my younger son Alnod Ernest Studd, upon the same trusts as hereinafter declared concerning the real estate next hereinafter devised to my trustees, and called 'Alnod's Freehold Estate;' and after the death of the said Alnod Ernest Studd, to the use of the first and every other son of the said Alnod Ernest Studd successively according to their respective seniorities in tail male, with remainder to the use of the first and every other son of the said Edward Fairfax Studd successively according to their respective seniorities in tail, with remainder to the use of the first and every other daughter of the said Edward Fairfax Studd successively according to their respective seniorities in tail, with remainder to the first and every other son of the said Alnod Ernest Studd successively according to their respective seniorities in tail, with remainder to the first and every other daughter of the said Alnod Ernest Studd successively according to their respective seniorities in tail, with remainder," &c. The will also provided "that my trustees shall have the fullest powers of determining what property passes under any specific devise or bequest contained in this my will or any codicil hereto, . . . and generally, of determining all matters as to which any doubt, difficulty, or question may arise under or in relation to the exercise of the powers or the execution of the trusts of this my will or any codicil hereto."

The expression "freehold of inheritance" was by joint-minute of the parties to this case, who consulted English counsel as to its terms, declared to denote an estate or right in lands which (as is the case with all lands in England) are held in fee of the Crown or of a subject-superior (to the exclusion of copyholds and leaseholds), and such that the estate or right is not merely for life or a term of years, but on the death of the holder without having received such power of disposition as the law allows him, will descend to his heir-general or the heir of his body, according as the estate is a fee-simple or an estate tail. "Without impeachment of waste" was declared by the same joint-minute to mean that the person so holding "may cut timber in a husbandman-like manner for his own benefit, and open mines, quarries, and the like, as well as work existing ones, and permit buildings, fences, and the like to dilapidate with impunity; but may not wantonly pull down houses or fell ornamental timber, or commit other injury of a like nature."

The Titles to Land Consolidation Act 1868 (31 and 32 Vict. cap. 101), sec. 20, provides that a conveyance of heritage shall not from and after the commencement of that Act be invalid by reason of the absence of the word "dispone" or other words of *de presenti* conveyance; "and where such deed or writing shall not be expressed in the terms required by the existing law or practice for the conveyance of lands, but shall contain with reference to such lands any word or words which would if used in a will or testament with reference to moveables be sufficient to confer upon the executor of the grantor, or upon the grantee or legatee of such moveables, a right to claim and receive the same, such deed or writing, if duly executed in the manner required or permitted in the case of any testamentary writing