

ceed accordingly. As it stands, it certainly refers to the whole fund in medio; and it is asserted in these papers, and I think was asserted at the Bar, that part of the funds in question were not constituted of this pro indiviso moiety belonging to Lady Mary. June 17. 1825.

Adam. There was a parcel of land not included.

Lord Gifford. There was a parcel of land, called Levine-side, clearly not included in the disposition of Mr Wauchope: perhaps it will be better for the House to insert after the words 'fund in medio,' 'in so far as that fund is constituted of the rents of the pro indiviso half of the lands.' I will prepare the judgment of the House, that there may be no mistake about it; and before it is moved here, the agents shall have an opportunity of seeing it, that there may be no mistake upon it. With that variation, I would move your Lordships that the judgment be affirmed.

Appellants' Authorities.—(1.) 1. Bell, Com. 641. 4. edith and cases there; Wight, 282. and cases there; Lockhart, Feb. 19. 1819, (F. C.); 2. Ersk. 7. 16.; Bell on Titles, 316.; 2. Ross, 173. 320.; 3. Bank. 2. 13.; Edgar, July 6. 1736, (3089.); Harvey, Dec. 12. 1811, (F. C.); Smith, June 30. 1752, (10,803.); Durham, Nov. 24. 1802, (11,220.)—(2.) 3. Ersk. 8. 54.; Carmichael, Nov. 15. 1810, (F. C.; affirmed May 15. 1816.)

Respondents' Authorities.—2. Ersk. 7. 16.; Robertson, Nov. 27. 1751, (3044.)

J. CHALMER—J. CAMPBELL,—Solicitors.

HUGH CALLUM, Appellant.

No. 40.

CHARLES FERRIER, Trustee on the Estate of Scotch Patent
Cooperage Company, Respondent.

Lien—Retention.—Held, (affirming the judgment of the Court of Session), That a person employed to cut wood under the superintendence of the manager of the employer, and who was not in actual possession of the wood, had no right of lien or retention for payment of his wages.

THE Scotch Patent Cooperage Company purchased the growing wood of Fairburn and elsewhere, in Ross-shire, and employed Hugh Callum and others to cut, bark, drag, and float it to Dingwall, at a certain rate per tree. The Company had a manager who superintended the work. Callum employed men, and commenced operations. After a good deal of the work had been done, and a considerable sum become due to

June 17. 1825.

1ST DIVISION.
Lord Meadowbank.

June 17. 1825. Callum, the affairs of the Company got into such embarrassment, and their superintendant thereby so limited in pecuniary means, that Callum and his workmen were constrained, from want of regular payment, to suspend, and ultimately to abandon work, leaving the trees where they happened to be cut or floated. The Company proved bankrupt, and were sequestrated. Berry the trustee having advertised the cut wood for sale, Callum applied to the Sheriff of Ross-shire for an interdict against Berry and his agent Kelly, until his wages were paid; and shewed a balance of L. 381. 11s. due to him. The Sheriff found, ' that it is admitted ' by the respondents, (defenders), that the petitioner was employed ' to cut, bark, drag, and float the wood in question, and that the ' petitioner's charge for these operations is not disputed. Finds, ' that the petitioner had a lien over the wood to the extent of his ' claim; and that the respondents, who were long since aware of ' the nature and amount of that claim, should have settled it in ' some shape or other, before attempting to dispose of the wood ' to his prejudice. In these circumstances, the Sheriff continues ' the interdict until the respondents find security acted in the ' Sheriff Court books of Ross, that the amount of the petitioner's ' claim, as stated in the petition, or whatever sum may be ultimately found due to him, shall be paid to him from the proceeds of the wood, when sold.' The trustee put in a minute, that he by no means acquiesced in this interlocutor, but offered to find security for whatever sum should ultimately be found due. The following bond was in consequence granted by Forsyth and M'Gregor as cautioners:—' We, &c. do hereby bind and oblige ' ourselves, conjunctly and severally, and our heirs, executors, ' and successors, as cautioners and sureties, acted in the Sheriff ' Court books of Ross, for John Berry, trustee on the sequestrated estate of the Scotch Patent Cooperage Company, Port-Dundas, Glasgow, and Alexander Kelly, writer in Dingwall, ' his agent and mandatary, that they shall make payment to ' Hugh Callum, residing at Dalarick, or to any person or persons to whom the Sheriff-depute of Ross and Cromarty shall ' decern payment to be made, of the principal sum of L. 493. 8s., ' deducting the sum of L. 141. 17s. said to be paid in part; conform to account, with affidavit, produced by the said Hugh ' Callum, and referred to in an application or petition for an interdict presented by him on the 3d day of June last to the said ' Sheriff and his substitutes, against the said John Berry and ' Alexander Kelly, with interest of said sum since due, till paid;

‘ together with all damage and expenses which may be awarded June 17. 1825.
 ‘ by the said Sheriff and his substitutes against the said John
 ‘ Berry and Alexander Kelly in the said process of interdict, or of
 ‘ whatever other sum shall ultimately be found due to him the
 ‘ said Hugh Callum in the said process of interdict, and that out
 ‘ of the proceeds of the wood, the subject thereof, when sold, in
 ‘ terms of the Sheriff’s interlocutor of date the 24th July last;
 ‘ and we consent to the registration,’ &c. In respect of this
 bond, the Sheriff recalled the interdict, and granted warrant to
 the respondent of ‘ new to advertise the wood in question, and
 ‘ to dispose of the same by public roup to the best account.’
 It was alleged that the wood produced only L.162. 16s. 2d.
 Before the sale, however, Callum charged on the bond. Forsyth
 and M’Gregor suspended. An ordinary action was also raised
 against the trustee, who then brought a reduction of the proceed-
 ings before the Sheriff. Berry in the meanwhile was succeeded
 by Ferrier. The Lord Ordinary sustained the defences in the
 ordinary action, and the reasons of suspension and of reduction;
 and the Court (20th December 1822) adhered.*

Callum appealed.

Appellant.—1. The parties are bound by the judicial reference
 and the bond of caution.

2. An artificer who gets a commodity to operate upon, or
 to transform in any shape, has a lien for the price of his
 labour; and the appellant was entitled to the advantage of this
 privilege. When he and his workmen were originally employ-
 ed, they had clearly such possession of the wood as founded
 a lien for remuneration of their labour. The possession requir-
 ed must be suited to the nature of the labour; and the appellant,
 in the act of cutting down the wood, and floating it to its des-
 tination, had all the possession of which the case was susceptible.
 He had no right of property or possession of the ground or
 water where the wood lay, but he had a legal possession of the
 wood sufficient to maintain his lien. The appellant did not,
 previous to the sequestration of the Cooperage Company, volun-
 tarily quit possession of the wood. The work was stopped solely
 from the Company ceasing to make the advances incumbent on
 them. The wood was not ceded to them, but remained where

* 2. Shaw and Dunlop, No. 99.

June 17. 1825. cut, and by interdict was prevented from being sold until the arrangement of the bond of caution.

Respondents.—1. There was no judicial reference, nor acquiescence in the Sheriff's judgment, but merely an obligation to pay what should be finally awarded, and no final adjustment has followed. Besides, the Sheriff's interlocutor has been reduced and set aside.

2. The appellant's claim is not privileged; nor has every tradesman of necessity a lien or security over the subject of his operations for the expense of these operations. To constitute a lien there must be actual possession. Callum had not that possession. He was merely the contractor for cutting, &c.; but the Company's overseer was on the spot to superintend and pay wages. At any rate the appellant gave possession up, and abandoned the work. In these circumstances, it is in vain to assert a right of retention to the prejudice of the Company's creditors.

The House of Lords ordered and adjudged, 'that the appeal be dismissed, and the interlocutors complained of affirmed.'

Appellant's Authorities.—1. Bell's Com. p. 177. 5th edit.; Stat. 54. Geo. III. c. 137. § 38.

Respondent's Authorities.—2. Bell's Com. p. 158-91-95. 5th edit.

SPOTTISWOODE and ROBERTSON,—Solicitors.

No. 41.

THOMAS, Earl of STRATHMORE, Appellant.

SIR JOHN DEAN PAUL, and Others, Trustees of JOHN late Earl of STRATHMORE, Respondents.

June 17. 1825.

1ST DIVISION.

Aliment—Expenses.—Held, (affirming the judgment of the Court of Session, with costs),
1. That the younger brother of an Earl, who had attained majority,—had received a provision from his father of L. 12,500,—and who had succeeded to the titles, but was excluded from the estates by a trust-deed executed by his brother in favour of trustees,—had no claim of aliment against these trustees, although he was destitute, and the estates had originally belonged to his father. 2. That he was not entitled to payment of the expenses of process out of the trust-estates.

FROM an early period the estates of the family of Strathmore had descended through a regular series of heirs, till they became vested in John 9th Earl of Strathmore, the father of John 10th