

Copy

Summons &c.

In action of

Division of Commonty

Sir R. D. H. Elphinstone Bart

against

Right Hon. Lord Forbes

& others

1844

1903

Webster Will & Co.

(p. 1) Victoria &c – Whereas it is humbly shown to us by our lovite Sir Robert Dalrymple Horn Elphinstone of Horn and Logie – Elphinstone, Baronet, pursuer. – that he is proprietor of and stands heritably infeft and seised in All and Whole those parts of the barony of Horn underwritten, viz:- All and Whole the lands and barony of Pitmedden, comprehending the town and lands of Pitmedden, mill croft thereof, the town and lands of Over Carden, the plough or eighth part of the lands of Buchanstown, now called Bruxton, the town and the lands of East Pitmarchie, the mill crofts of Pitmarchie, formerly called the mill of Pitmedden, with the mill-lands of the same, called Mackenzies or

(p. 2) or Macterries croft, together with the multures and sequels of the whole foresaid lands and others above mentioned: And also, with All and Whole the houses, buildings, yards, tofts, crofts, mosses, muirs, commonties, common pasturages, outsetts, insetts, annexis, connexis, dependencies, parts, pendicles, and pertinents of the same whatsoever, with the privilege and liberty of casting, winning, and transporting peats and feuel, foggage, feal and divot, to all the lands and others above mentioned, according to use and wont, all as formerly united and erected into one and entire barony, called the barony of Pitmedden, and now part of the barony of Horn: As also, All and Whole the two ploughs of Ardoyne with

(p. 3) with the eight oxgate or ploughs of the town and lands of Ardoyne or Buchanstown, vulgarly called Pitcaple's Plough, with houses, buildings, mills, multures, yards, orchyards, woods, fishings, tofts, crofts and whole pertinents of the same, and with liberty of pasturage and feual on the hill of Bend-up-high, all lying in the parish of Oyne, and Sherifffdom of Aberdeen; As Also All and Whole the town and lands of Old Rayne, with houses, buildings, tofts, crofts and whole pertinents thereof, with the mill of Rayne, and mill-lands, astricted multures, and knaveships of said mill, and of the lands and barony of Rayne, used and wont, with the whole pendicles thereof, together with the services of all the tenants,

(p. 4) tenants, cottars, and husbandmen of the said barony, either in the maintenance or upholding in the buildings, construction, and reparation of the mill-house of the same in all its necessaries, in which they were formerly astricted; together with commonty and full power of digging and winning feal on the lands of Cockmyre, and of pasturing cattle thereon according to use and wont, with free ish and entry to the pursuer and his heirs and successors, and to the inhabitants of the said town of Old Rayne and mill above written, of going to and returning with their servants and horses to the moss of Bonnington, and also of winning peats and feal in the said moss of Bonnington and

(p. 5) and in all parts thereof used and wont and carrying and leading the same freely for their use perpetually in future, according to ancient use and wont, without any hindrance by the tenants and feuars of the said lands of Bonnington or others whatsoever, and with power in all time coming of ploughing, winning, and appropriating the uncultivated lands: As also, All and Whole, the burgh of barony of Old Rayne, with the immunities, liberties, and privileges, as therein particularly enumerated, conform to Crown-charter of resignation in his the pursuer's favour, dated the 2nd day of June, and written to the seal,

and registered and sealed the 10th day of July, both in the year 1810, and instrument of sasine following

(p. 6) following thereon in his the pursuer's favour, dated the 25th and registered in the particular register of sasines at Aberdeen the 27th days of August 1810: As also, in All and Whole the town and lands of Old and New Westhall, with the tower, fortalice, and manor-place thereof, with the mill and mill-lands of the same; together with the houses, biggings, yards, annexis, connexis, outsets, insets, parts, pendicles, and pertinents of the same, lying within the parish of Oyne, and sheriffdom of Aberdeen, with muirs, marshes, meadows; together with tillage and common pasturage within the forest and mountain of Bend-up-high, used and wont, with free exit and entrance to the same, conform to precept

(p. 7) precept from our Chancery in his the pursuer's favour, as heir whomsoever of the deceased James Horn, his brother, dated the 22nd day of February 1843, and instrument of sasine following thereon in his the pursuer's favour, dated the 4th and registered in the particular register of sasines at Aberdeen the 6th days of March 1843: As also, charter of resignation by him, the pursuer, of the said lands of Westhall and others in favour of himself, dated the 15th day of March 1843, and instrument of sasine following thereon in his the pursuer's favour, dated and registered in the particular register of sasines at Aberdeen the said 15th day of March 1843 : As also Disposition containing procuratory of

(p. 8) of resignation, ad remanentiam, by him the pursuer, of the said lands of Westhalls and others, above described, in favour of himself, dated the 16th day of March 1843, and instrument of resignation ad remanentiam, proceeding thereon in his the pursuer's favour, dated and registered in the particular register of sasines, at Aberdeen the said 16th day of March 1843; As also, in All and Whole the town and lands of Ardoyne, Stone-Bridge and Mill of Ardoyne, with sequels, knaveships, and multures of the same, and whole parts, pendicles, and pertinents of the said lands, and liberties and privileges thereto belonging, as the said lands, mill, and others, are more particularly specified and

(p. 9) and described in a charter granted by the principal and regents of Marischal College and University of Aberdeen, to the deceased John Horn, therein designed of Westhall, the pursuer's ancestor, in said lands, dated the 18th day of February 1706, and in the said John Horn's infetment following thereon, dated the 18th day of May, and recorded in the general register of sasines the 14th day of June, both in the year 1706, conform to charter of resignation by the said principal and regents of Marischal College, Aberdeen, in his the pursuer's favour, dated the 27th day of February 1810, and instrument of sasine following thereon in his the pursuer's favour, dated the 17th and registered in the particular register of sasines, at Aberdeen the

(p. 10) the 21st days of May 1810 : As also, in All and Whole the lands of Ryehill and Buchanstone, commonly called Knockmorgan, the Mill of Buchanstone , formerly called the Mill of Ardoyne, the mill-lands, multures, sucken, and sequels thereof, the plough of land of Hatton of Ardoyne, sometime possessed by Patrick Croy and James Lamb, and

crofts called Cowbridgedale Crofts, once possessed by Alexander Mearns, and George Leadingston, which are parts and pendicles of the daugh of land of Ardoyne, with the astricted multures, sequels and knaveships of the said lands, used and wont, and the multures, sequels, and knaveships of the two ploughs of Buchanstone and Hatton, used and wont, which sometime

(p. 11) sometime pertained heritably to John Leslie of Harthill, together with the houses, biggings, yards, orchyards and universal pertinents thereto belonging lying within the parish of Oyne, county of Garioch, and sheriffdom of Aberdeen; As also All and Whole the lands of Buchanstown, and Hatton of Ardoyne, comprehending the town and lands of Parkbrae, with the manorplace thereof, with all the houses, office-houses, yards, and orchyards of the same, with the outfield belonging thereto, commonly called Westside and Windyhills, the town and lands of Heuchwalls, Buckiebutts, otherwise called Scotstown, Clerkseat, in Over Buchanstown, Coblevaig, Loanhead, Badrin, with the town and lands of Craigmore, and Hatton of Ardoyne, with the

(p. 12) the croft of land called Taylor Croft, and the rigg commonly callen Cowendellrig, with the millbank and pertinents of the same, in Over Buchanstown, As also, All and Whole the plough of land in Nether Buchanstown, with the croft called Stony-yard, together with the whole houses, yards, mosses, muirs, meadows, commonties, common pasturages, tofts, crofts, outsetts, insetts, annexis, connexis, dependencies, parts, pendicles, and other pertinents, libertys, and privileges thereto belonging, with the teinds, both parsonage and vicarage, of the same, all lying within the said parish of Oyne and sheriffdom of Aberdeen; and besides three ploughs of Ardoyne, with three eighth parts of the Mill of Ardoyne with houses, biggings

(p. 13) biggings, yards, tofts, crofts, parts, pendicles and pertinents thereof, lying within the parish of Oyne and Sheriffdom of Aberdeen foresaid; conform to charter of resignation and confirmation by James, Earl of Fife, of the said lands of Ryehill and others, in favour of the deceased, General Robert Horn, the pursuer's father, dated the 7th day of November 1771, and instrument of sasine in his the pursuer's favour, following on the unexecuted precept of sasine contained in the said charter, and on the retour of the general special service of the pursuer as heir to the said General Robert Horn, his father, expedie before the sheriff of Aberdeen, and dated 17th February 1810; which instrument of

(p. 14) of sasine is dated the 25th and registered in the particular register of sasines at Aberdeen the 27th days of August 1810; As also, in All and Whole the barony of Logie-Elphinstone, comprehending therein All and Sundry the lands, manor-places, milns, miln-lands, multures, mosses, and privilege of common pasturage, rights of patronage, teinds and other particularly underwritten, viz:- All and Hail the town and lands of Logie-Durnay, and the new croft made upon a pendicle and piece of land called Swingle, with the croft and piece of land called Rainbutts, and new miln called the Mill of Knockollochie, mill-lands, sequels, and knaveships of the same, together with the astricted multures of the said town and lands, of Logie-Durnay and Knockollochie

(p. 15) Knockolochie, the Pitbee Crofts of the Chappel of Garioch belonging to the same; Beetshaugh, Craigtowie and Craigmiln, with the right of reversion of the town and lands of Craigtowie and Craigmiln, and with the dwellingplace and mansion house of Logie, (~~with~~) built by the deceased Sir James Elphinstone of Logie with the yards, orchyards, parks, dovecoats, with All and Sundry houses, biggings, yards, orchyards, annexis, connexis, dependencies, tofts, crofts, parts, pendicles and privileges, and all and sundry pertinents thereunto belonging lying within the parish of Logie-Durnay and sheriffdom of Aberdeen, together with the liberty and priviledge of moss or moss-leave in the hill of Bend-up-hye, with the priviledge of casting and away-carrying peats of and from the west moss of Glack to the said new

(p. 16) new mill and mill- lands thereof, for serving the tenants and possessors of the same, and with common pasturage used and wont, with advocacion, donation, and right of patronage of the parish and parish church of Logie and Chappel of Garrioch, with the parsonage teinds and other teinds great and small, as well parsonage as vicarage, of the said lands and others above written: All and Haill the town and lands of Kirkton of Rain, with the croft of the same called the Ale-house Croft, with houses, biggings, yards, tofts, crofts, parts, pendicles and pertinents of the same whatsoever, lying within the said parochin of Rain and sheriffdom of Aberdeen: And sicklike, All and Haill the town and lands of Lentush

(p. 17) Lentush, as well the sunny as the shaddowy halves of the same, with the dwelling-place thereof; As also that pendicle commonly called Cockmuir, with all and sundry the houses, biggings, yards, tofts, crofts, orchyards, outsets, insets, mosses, annexis, connexis, muirs, marishes, commonties, common pasturage, parts, pendicles, and pertinents of the said lands of Lentush, sunny and shaddowy sides thereof and lands of Cockmuir, lying within the said parish of Rain and sheriffdom of Aberdeen: And sicklike, All and Haill the town and lands of Luesk, tofts, crofts, multures and knaveships, and their pertinents, lying within the parish of Rain and Sheriffdom of Aberdeen above mentioned: And

(p. 18) And sicklike, All and Haill the lands of Meikle Durnoch called Bridgend, Kemmels, Knows, Loanends, Mosside, Enadanach, and others pertaining thereto, with the milntown called the Milltown of Durnach and miln, miln-lands, multures, sucken and knaveship of the same, houses, biggings, woods, fishings, mosses, muirs, marishes, pasturages, parts, pendicles, and universal pertinents of the same whatsoever, lying within the parish of Durnay, lordship of Garrioch, and sheriffdom of Aberdeen: And also, All and Haill the lands of Meikle Wartle, and the miln, miln-lands, multure, sucken and knaveship, with all and singular outsetts, insetts, tofts, crofts, parts, pendicles and pertinents of the same, with the

(p.19) the outfield and in field land of the same, with houses, biggings, tenants, tenandries, and services of free tenants, lying within the said parish of Rain, and sheriffdom of Aberdeen, foresaid, conform to precept from our Chancery in his the

pursuer's favour, as heir whomsoever to the deceased James Horn, of Horn and Logie-Elphinstone, his brother, dated the 10th day of October 1798, and instrument of sasine following thereon in his the pursuer's favour, dated the 15th day of October, and registered in the general register of sasines the 19th day of November both in the year 1798: As also, charter of confirmation and precept of clare constat by him, the pursuer, of the said lands and barony of

(p.20) of Logie-Elphinstone, and others, in favour of himself, dated the 22nd day of November 1798 and registered in the books of Council and Session the 19th day of February 1810, and instrument of sasine following thereon in his the pursuer's favour, dated the 8th, and registered in the general register of sasines the 26th days of December 1798: As also procuratory of resignation, ad remanentiam, by him the pursuer of the said lands and barony of Logie-Elphinstone, and others, in favour of himself, dated the 15th day of June 1799 and registered in the books of Council and Session the 19th day of February 1810, and instrument of resignation, ad remanentiam, following thereon in his the pursuer's favour, dated the 4th and registered in

(p.21) in the particular register of sasines, at Aberdeen, the 7th day of May 1804: As also, All and Whole that part of the said lands of Meikle Durno, called the town and lands of Threepleton, as repurchased by the pursuer from Arthur Gray at Harthill, lying within the parish of Logie-Durno or Chapel of Garioch, lordship of Garioch, and shire of Aberdeen, and bounded by the lands of Pitscurry, now belonging to the pursuer, on the south; the lands belonging to Mr Roderick Mackenzie of Glack, on the east; and the lands of Durno and others, belonging to the pursuer, on the north and west parts; together with the multures, knaveships, and sequels of the said lands and teinds of the same: As also All

(p.22) All and Whole that part of the high moss of Meikle Wartle, now pointed out by march cairns and poles, and set apart for the use and accommodation of the said lands of Threepleton amounting to two and a half acres or thereby, and bounded on the east by the moss belonging to Mr Mackenzie of Glack, on the north by a line southwest from the march cairn betwixt Glack and Mounie, and extending on the other side as far as the mossground reaches; together with free access, ingress, and egress, to and from the lands and moss above described, by all the ways and passages used and wont, and with the whole other liberties, privileges, and

(p.23) and pertinents thereto belonging: As also, All and Whole the town and lands of Pitscurry, with the croft of Damhead, as occupied by Alexander Greig, William Duffus, James Connen, James Johnstone, and Alexander Marr, together with the teinds, parsonage and vicarage, thereof, reserving to the proprietors and tenants of the lands of Conglass, Howford, Balliagarty, and Mill of Inveramsay, the privilege & toleration as hitherto enjoyed by them, of casting, winning, and away-carrying peats, turffs, and other firing, from the moss of Pitscurry; but declaring that any such privilege or liberty at present enjoyed by the tenants of the beforementioned, or of any other lands belonging to Lieutenant-Colonel Knight Erskine of Pittodrie shall cease

(p.24) cease and determine after the expiry of their present leases: As also, that part of the farm of Bridgend which was taken off the estate of Logie-Elphinstone, and added to that of Pittodrie, under and by virtue of a contract of excambion entered into between the pursuer and Henry Knight Erskine, elder of Pittodrie, and Henry Knight Erskine, younger of Pittodrie, both now deceased, dated the 27th day of April, 1st and 7th days of May, 29th day of July and 1st day of August and registered in the Sheriff Court books of Aberdeen the said 1st day of August all in the year 1805, lately repurchased by the pursuer from Colonel William Howe Knight Eskine of Pittodrie, with the proportion of

(p.25) of seats in the parish church of Chapel of Garioch corresponding to said whole lands; and haill houses, biggings, yards, crofts, mosses, muirs, commonties, and common pasturages, parts, pendicles, and pertinents thereof all lying within the said parish of Chapel of Garioch, and county of Aberdeen: As also, All and Haill those parts of the mill of Carden, bounded on the north and east by the water of Urie, on the south by the water of Gaudy, and on the west by the lands of Over Carden; extending to 140 acres, 1 rood and 20 falls, Scots measure or thereby exclusive of the ground occupied by that part of the turnpike road passing through the same, and lying in the Parish of Oyne and

(p.26) and county of Aberdeen, with the teinds of the said whole lands, parsonage and vicarage, in so far as the said Lieutenant-Colonel Knight Erskine had right thereto, with the whole other parts, privileges and pertinents thereto belonging, houses and biggings, with the multures sucken, sequels, and knaveship thereof; the said lands being now liberated from all astriction or thirlage to any mill or sucken pertaining to the said Lieutenant-Colonel Knight Erskine, the same being loosed and disjoined from his estate of Pittodrie in all time coming : And which lands and barony of Logie-Elphinstone and others, or certain portions thereof, are also described as follows in the other titles thereto

(p.27) thereto in the pursuer's favour after mentioned : All and Whole those parts of the lands and barony of Logie-Elphinstone, and certain parts of the said lands (œf) and barony lands of Leusk, Meikle Durney, and others, upon which is the mansion-house of Logie-Elphinstone, with offices, gardens, and plantations, built, repaired, and made at considerable expense, and which adjoin the said estate of Horn – That is to say, the parts bounded as follows namely, beginning at the Bridge of Pitcaple, over the water of Urie, westward by the course of the said water to a march-dyke opposite to the lands of Newmill running southward from the water to the Kings highway

(p.28) highway or turnpike-road, and keeping along the said road westward to the march-dyke immediately westward of the road leading from the turnpike to the Ford of Urie, leading to the house of Logie-Elphinstone from the said march-dyke, keeping the course of the water until it comes to a small burn or rivulet called the Muirburn, and from thence northward along the present march between the entailed lands of Old Rain, lying on the north east side of Urie and the barony of Logie-Elphinstone to a march-cairn in the Muir

of Rain, from thence in a north and eastward direction along the march between the lands of Leusk and

(p.29) and Kirktown of Rain, crossing the commutation road leading from the Kirktown of Rain to Bridge of Pitcaple to a march-cairn where the marches of Leusk, Durney, Kirktown, and Lentush, join; from said cairn, in nearly a straight line, south-east, or thereby, through the moss of Durney, and along the north side of the meadow land occupied by Charles and William Diack to the southmost point of the intown lands of Loanend; from the said point north-eastward, or thereby, along the outward boundary of the intown land to a small burn or strype called the burn of Loanend, opposite to the houses of Loanend, keeping the said burn south-eastward or thereby, to

(p.30) to a bridge called the Post Bridge, over the Burn of Durney; from thence, keeping the course of the said burn, southward to a march-stone between the lands of Durney and Bridgend; from said stone, in a straight line westward, to another march-stone on the side of the foresaid commutation road, and keeping the line of the said road to the Bridge of Pitcaple, where the march above described begins; which lands bounded as before mentioned, comprehend the particular towns and possessions after specified viz:- the dwelling-place and mansion-house of Logie-Elphinstone, with the offices, gardens, dovecots, houses, buildings, and plantations thereto adjoining, Craigtowie, Craigmill, part of Logie

(p.31) Logie-Durney, Rainbutts, Newmill or Mill of Knockollochie, now down, all in the natural possession of the said Sir Robert Dalrymple Horn Elphinstone, pursuer, and his tenants; that part of Logie Durney and pendicle called Swingle, now or formerly possessed by George Hall; Beeshaugh, now or formerly possessed by Alexander Webster; that part of Milltown of Durney and Meddley Park, now or formerly possessed by Alexander Webster; that part of Milltown of Durney now or formerly possessed by Doctor James Garioch; that part of Bridgend of Meikle Durney now or formerly possessed by Alexander and John Middletons; Kemmels now or formerly possessed by Alexander and John Maitlands, and

(p.32) and others; Knows, now or formerly possessed by James Emslie, George Murray, Alexander Davie, Peter Davie, Joshua Fowler, Andrew Galloway, Widow Booth, John Hay, Widow Kemp, John Davie, David Cocker, Alexander Davidson, John Fraser and Alexander Brownie; Durney and Moss-side, now or formerly possessed by Charles and William Diack; Leusk now or formerly possessed by John Ledingham, George Ledingham, James Kemp, and Alexander Phillip; those parts of Milltown of Durney and Bridge-end, now called Whiteford, now or formerly possessed by Alexander Booth, Alexander Clerk, George Forbes, James Sievewright, John Robertson, George Howie, Peter Gall, and Robert Innes; together with the privilege of moss-leave on

(p. 33) on the hill of Bend-up-hye, with the privilege of casting and away-carrying peats off & from the west moss of Glack, to the said Newmill and mill-lands thereof, for serving the tenants and possessors of the same, and with common pasturage used and wont,

with the parsonage-teinds, and other teinds great and small, as well parsonage as vicarage, of the said lands, and others above written, with the multures of the Mill and Milltown of Durney, sucken and knaveships of the same arising from the lands above recited; together also with that part of the Moss of Wartle belonging to the said Sir Robert Dalrymple Horn Elphinstone, pursuer, lying on the west side of a

(p. 34) a line drawn from south-west to north-east, marked by cairns at the extremities of the said line, comprehending nearly the one half of the surface of said moss, or thereby, excepting always the sole or botton thereof after the peats and firing are exhausted; with the haill parts, pendicles, and pertinents of the said lands, and whole privileges thereunto belonging, all lying within the parishes of Logie-Durno, or Chapel of Garioch and Rain, lordship of Garioch, and county of Aberdeen; conform to Crown-charter of resignation in his the pursuer's favour, dated the 3rd day of February, and written to the seal, and registered and sealed the 26th day of May 1812

(p. 35) 1812, and instrument of sasine following thereon, in his the pursuer's favour, dated the 17th and registered in the particular register of sasines at Aberdeen the 18th days of June in the year 1812; but excepting always from the foresaid several descriptions of lands contained in the foresaid several and respective title-deeds in the pursuer's favour before-mentioned, those parts and portions thereof sold and disposed by the pursuer to the late William Gordon, Esquire of Rothnie, by disposition dated the 22nd day of June 1812; and also, those parts and portions of said lands before described, sold and disposed by the pursuer to the deceased Alexander Gordon, Esquire of Newton by

(p. 36) by disposition dated the 18th day of January 1814; as also those parts and portions of said lands before described; sold and disposed by the trustees, under a trust disposition executed by the pursuer, of date the 21st day of August 1832, with consent of the pursuer, for all right and title he had to the said last-mentioned parts and portions of said lands, to and in favour of the late John Gordon Esquire of Avochie, by disposition by the said trustees with consent of the pursuer, in favour of the said deceased John Gordon, dated 19th October, 25th November, and 20th December 1837, and 4th February 1840; And also those parts of portions of said lands before

(p. 37) before described, sold and disposed by the said trustees, with consent of the pursuer as aforesaid, to Hugh Lumsden Esq., of Pitcaple, by disposition by the said trustees, with consent of the pursuer, in favour of the said Hugh Lumsden, dated the (blank) days of (blank) 183(blank): That the pursuer, his predecessors and authors and their tenants have, past the memory of man, possessed the commonty or common grounds lying adjacent to his said lands, known by the name of Bend-up-hie or Benachie, as their common property, and part and pertinent of their said lands, by pasturing cattle and sheep, casting feal and divot, and using other acts of commonty thereon, whereby the pursuer, in terms of

(p. 38) of the act of Parliament 1695 chap. 38, entitled "Act concerning the dividing of commonties" has good and undoubted right and interest to prosecute and insist in an action of division of the said commonty in manner underwritten: And although the pursuer has often desired and required the Right Honourable Walter Forbes, Baron Forbes; Captain Henry Knight Erskine of Pittodrie; John Edward Leslie, Esq., of Fetternear, Count of the Holy Roman Empire; Robert Grant Esq., of Tillyfour; Sir James Grant of Monymusk, Baronet, and the said Robert Grant, curator of the said Sir James Grant; Sir Andrew Leith Hay of Rannes, Knight of the Hanoverian Guelphic Order; Harry Leith Lumsden Esq., of Auchindoir; Robert Grant

(p. 39) Grant Esq., of Druminnor; Hugh Lumsden Esq., of Pitcaple, Theodore Gordon Esq., of Overhall; John Gordon Esq., of Cluny, and Alexander Abercromby Esq., of Rothnie, all in the county of Aberdeen, defenders conterminous heritors, as having, or pretending to have, interest in the said commonty, to concur with him in a division thereof; Yet they refuse, at least delay so to do; Therefore the said defenders ought and should exhibit and produce the several writs and titles by which they claim any right either of property in, or of servitude over, the said commonty; And it ought and should be found and declared, by decree of the lords of our Council and Session, that the pursuer

(p. 40) pursuer is entitled to prosecute an action of division of the said commonty against the defenders, or such of them as have any right thereto; and thereon the same ought and should be divided by decree of the said Lords, among the several parties concerned, according to the valuation or valued rent of their several lands and properties; and for that purpose a commission should be granted by the said Lords to the Judges Ordinary, or other proper persons, to perambulate the said commonty, and take a proof of the extent, limits, quality, and marches thereof, as the same have been reputed, possessed, and enjoyed for forty years bygone, or past the memory

(p. 41) memory of man, by the pursuer, and such of the defenders as shall produce their rights and others foresaid, and to describe the marches of the said commonty, and set up march-stones therein, and take a proof of the valuations or valued rent of the lands and properties of the several parties who shall instruct their right and interest in the said commonty; to appoint a proper person or persons, on oath, to value the several parts and parcels of the said commonty, on due consideration of the different qualities of the soil and grounds thereof, and to appoint a surveyor or surveyors, also on oath, to measure and survey the said commonty, and

(p. 42) and the several parts and pertinents thereof so to be valued; and thereafter to divide the said commonty amongst the pursuer and the other persons concerned, according to the valuation or valued rent of their respective lands and properties, and to draw out a plan thereof, and of the several divisions made of the same, and to mark off, by stones or otherwise, the several divisions and shares to be allocated to each person, with instructions to the said commissioners, that in making the said division the parts to be allotted to each heritor be such as may be next adjacent to or as near as possible to his property; and with

(p. 43) with power also to the said commissioners to cause divide the mosses lying within the said commonty amongst the said heritors in manner foresaid; or, if it shall be instructed that the said mosses cannot be divided, to leave the same still common, with free ish and entry thereto, - all to be reported in due form to the said Lords; and upon the said proof and division being so reported, the said Lords ought and should Ratify, Approve of, and Confirm the said divisions and allocations, and Decern and Ordain the same to take full effect, and the said divisions and shares so allotted to pertain and belong to the respective parties, heritably and

(p. 44) and irredeemably: And it ought and should be found and declared by decree foresaid that the pursuer and other persons concerned, and their heirs and successors, have right to enjoy and possess their respective shares or divisions of the said commonty, allotted and appointed to each of them, as parts and pertinents of their other lands and heritages: And the pursuer and defenders ought and should be decerned and ordained to execute such deeds and writings as may be necessary in carrying these proceedings into effect: And the said defenders ought and should be decerned and ordained, by decree foresaid, to make payment to the pursuer of £100 sterling each, or such other

(p. 45) other sum, more or less, as the said Lords shall ascertain to be their respective portions of the expenses to be disbursed in prosecuting and obtaining the said division, corresponding to the valuation of their respective lands, conform to the accounts thereof, to be adjusted by the said Lords, and of the expenses of the process to follow hereon, besides the dues of extracting the decree to be pronounced therein: And such of the said defenders as shall not produce their rights and titles, and instruct their possession of the said commonty, ought and should be found and declared, by decree foresaid, to have no right thereto or interest therein, and should be discharged from

(p. 46) from claiming or exercising such right or interest in all time coming, after the form and tenor of the foresaid Act of Parliament, and laws and practice of Scotland, used and observed in the like cases, as is alleged:- Our will is herefore &c,

Dated 20th & signeted 21st February 1844.

Edinburgh 10th January 1846:— I hereby certify that I have compared the descriptions of lands given in the foregoing printed Summons with the descriptions in the title Deeds founded on, and that the descriptions in the Summons are true copies of the descriptions in the title deeds.

(Sgd.) Chas. Anderson, Notary Public.

(p.47) (Margin: No. 228 of process)

Joint Minute

For

Sir James Dalrymple Horn Elphinstone of Horn & Logie-Elphinstone, Baronet – Pursuer,
and for

The Right Hon. Walter Forbes, Baron Forbes; Lieut.-Col. Henry Knight Erskine of Pittodrie; Colonel Charles Leslie of Balquhain; Lancelot Iveson, Esq., of Blackbank in The County of York; Robert Grant, Esq., of Druminnor; James Gordon, Esq., of Manar; and John Robertson, Esq., Advocate in Aberdeen, accepting and surviving Trustees of the late Robert Grant Esq., of Tillyfour; Sir James Grant of Monymusk, Bart; and the said John Robertson as curator bonis to him; Sir Andrew Leith Hay of Rannes, Knight of the Hanoverian Guelphic Order and his son Lieut.-Col.

(p.48) Lieut.-Col. Alexander Sebastian Leith Hay, commanding 93rd Highlanders; the said John Robertson as factor loco tutoris for Henry Lumsden Esq., of Auchendoir; Robert Grant Esq., of Druminnor; Hugh Lumsden Esq., of Pitcaple; Theodore Gordon Esq., of Overhall; William Leslie Esq., of Rothnie and Drumrossie compeerer - and in right of Alexander Abercrombie, formerly of Rothnie, all in the County of Aberdeen – Defenders.

and for

The Right Revd. Dr James Kyle, residing at Presthome near Fochabers, and the Rev. John Sutherland residing in Aberdeen, Trustees of Robert Charles Grant Esq., of Balgowan; Alexander Sharp Shand Esq., of Drimmies; the Rev. Alexander Low, Minister of the Parish of

(p.49) of Keig; the Rev. John Wilson, Minister of the Parish of Premnay; the Rev. James Greig, Minister of the Parish of Logie-Durno; Mr Gordon Raeburn, Schoolmaster of the said Parish of Keig; Mr John Mann, Schoolmaster of the said Parish of Premnay; Mr George Selbie, Schoolmaster of the said Parish of Logie-Durno, compeerers,

in the

Action of Division of the Commonty of Benachie

Boyle for the said Sir James Dalrymple Horn Elphinstone Bart, pursuer, and Macpherson for the Right-Honble. Walter Forbes, Baron Forbes & others, defenders and compeerers; the whole parties having an interest and entitled to share in the said

(p.50) said commonty, represented - that this process was originally brought by the said deceased (Feb. 21st 1844) Sir Robert Dalrymple Horn Elphinstone of Logie Elphinstone, Baronet, and of this date (July 18th 1845), the Lord Ordinary Cumminghame, after various procedure, sustained the pursuers title to insist in this process, and also sustained the libel of division, and found the same relevant, and granted commission to John Thomson Gordon Esq., Advocate, in conformity with the conclusions of the libel and granted diligence against havers and witnesses. That of this date (Oct. 30th 1845), the said John Thomson Gordon accepted the said commission; and of this date (Feb. 6th

1846) the Lord Ordinary pronounced an Interlocutor appointing Mr Arthur Forbes, now Mr Arthur Forbes Gordon, W.S. to

(p.51) to be common agent and conduct the process for behoof of all the parties interested. That, of this date (4 June 1847), the Lord Ordinary, on the representation of the commissioner, ordained all parties having claims of servitude not yet lodged, to lodge the same with the commissioner in the course of the July immediately following, under certification.

That the commissioner, after leading proof at length, lodged (18 Jany. 1854) a report in which he found that rights of common property had been proved – (1) by Sir James Dalrymple Horn Elphinstone, the present pursuer, who had been sisted in room of his father deceased; (2) by the proprietors of Ardoyne; (3) by Lord Forbes; (4) by Lieut.-Col. then Captain Knight Erskine; (5) by Sir James Grant of

(p.52) of Monymusk; (6) by Henry Lumsden Esq., of Auchendoir; (7) by Robert Grant Esq., of Tillyfour; (8) by Sir Andrew Leith Hay, & his son; (9) by Colonel Charles Leslie of Balquhain, who had been sisted as a party in the room and place of Count Leslie deceased. The Commissioner also found that rights of servitude had been proved by Sir James Dalrymple Horn Elphinstone; the proprietors of Ardoyne; Captain, now Lieutenant-Colonel Knight Erskine; Lord Forbes; Sir Andrew Leith Hay and his son; Alexander Abercromby of Rothnie, now the property of William Leslie; Hugh Lumsden; Theodore Gordon; Grant's Trustees (Balgowan); Shand's Trustees (Drimmies); Colonel Leslie and the Ministers and Schoolmasters of the Parishes of Keig,

(p. 53) Keig, Premnay and Logie-Durno. He also found that certain parties had proved a usage of taking feal, divot, and heather, and stones, but he did not decide how far effect could be given in the division to these usages, and he recommended to the parties interested that they should agree that the servitude of pasturage, instead of being reserved, should be commuted for a portion of the commony in proportion to four-fifths of the valued rent of the lands in respect of which such servitudes were proved.

That to this Report, objections were given in these objections with the exception of the question whether or not the usage of taking stones could be sustained as a servitude formed matter of arrangement

(p. 54) arrangement, as set forth in the Minute No. 144 of process, by which inter alia, it was agreed that no parties who had established a servitude of pasturage should retain the same, but that they should have allotted to them in property portions of land in proportion to the values of the servitudes which they had established; and with a view to preparing the cause for final allocation and division, the Lord Ordinary, Neaves, before whom the cause had come to defend, of this date (20 July 1854), before answer remitted to Mr James Forbes Beattie, Land Surveyor in Aberdeen, and Valuator of Lands, with instructions to perambulate the common and ascertain its value with a view to its division in terms of the Commissioner's Report (except

(p. 55) (except in so far as modified by the said Minute) to value the servitudes, and to prepare such valuations and statements as would enable him to carry into effect the judgement of the Lord Ordinary or of the Court in reference to what usages were to be recognized and to report. And a Report by the said Mr J. F. Beattie having been lodged and allowed to be seen in which inter alia he expressed his opinion that the adoption of the Commissioner's suggestion as to the commutation of the rights of pasturage would be a fair adjustment in the division of the lands, the Lord Ordinary, of this date (2 Mch. 1855), pronounced an Interlocutor ordering the said Mr J. F. Beattie to lodge a

(p. 56) a Scheme of Division. To the Scheme of Division, reported in obedience to this Interlocutor, objections were given in, and the Lord Ordinary, of this date (26 July 1857) pronounced an Interlocutor deciding that the usage of taking stones was not a servitude known in law, or to which effect could be given, and remitting of new to Mr J. F. Beattie to prepare a new scheme of Division on the footing that such a usage could not be recognized, and after considering the objections which had been lodged and after various farther procedure, a Report and Plan (Nos. 215 & 217 of process) were lodged, and by Joint Minute (No. 220 of process) parties agreed that the Commonly should be divided in terms of the said Scheme, whereupon his Lordship again remitted to Mr J.

(p. 57) J. F. Beattie to place and set march stones and cairns for dividing each heritor's portion from the other, as also to set apart from the said common peat mosses, marked on the said Scheme of Division, to be used by the various parties interested in terms of his Report (No. 215 of pro. 20 Jany. 1858), the solum of the said mosses being ultimately appropriated, as shown in the Scheme of Division (No. 217 of pro.).

The said Mr J. F. Beattie has now lodged a farther Report saying that he has implemented the said Interlocutor. This Report and Plan (Nos. 225 & 226 of process), were of this date (24 Novr. 1858), allowed to be seen by all concerned, and no objections have been given in.

The process has, however, been so long in dependence, that various changes have taken place in regard to

(p. 58) to the parties interested in the division.

Mr Harry Leith Lumsden of Auchendoir, one of the original defenders, having died, the action was of this date (2 July 1844) transferred against Mr Henry Lumsden of Auchendoir, and the said Henry Lumsden having died, John Robertson Esq., Advocate in Aberdeen was, of this date (8 June 1858), duly sisted as factor loco tutoris for his grandson, Henry Lumsden, now of Auchendoir, his heir.

As already mentioned, Sir Robert Dalrymple Horn Elphinstone, the original pursuer, having died, his son Sir James Dalrymple Horn Elphinstone, was of this date (25 May

1849) sisted in his room, and Colonel Charles Leslie, of this date (13 Feby. 1852) was sisted in room of the deceased James Michael Leslie one

(p. 59) one of the original defenders.

Of this date, Lancelot Iveson Esq., of Blackbank, in the County of York; Robert Grant Esq., of Druminnor; James Gordon Esq., of Manar; and the late William Robert Baillie, Writer to the Signet, were sisted as parties as accepting and surviving Trustees of the late Robert Grant Esq., of Tillyfour and the said John Robertson, as curator bonis to Sir James Grant of Monymusk, Bart., was of this date (8 June 1858) sisted as a party to the process, in room of the former curator, the said deceased Robert Grant of Tillyfour.

That of this date (16 Decr. 1858), Captain John Gordon of Cluny; Dr William Fullarton Cumming; Dr James Brand Allan; and William Robison Esq., Advocate, in Aberdeen, Trustees of the

(p. 60) the late Colonel John Gordon of Cluny, one of the original defenders, were sisted as parties in his room, and stated that they did not intend to insist on the Claim lodged for their predecessor in this action.

The Rev. Charles Gordon and John Gordon, the trustees of the late Robert C. Grant of Balgowan, compearers, having died, the Right Rev. Dr James Kyle, residing at Preshome, and the Rev. John Sutherland, residing in Aberdeen, their successors, as Trustees of the said Robert C. Grant, were of this date (16 Decr. 1858), sisted in their room.

Mr Thomas Dawson, Schoolmaster of Logie-Durno, compearer, having ceased to hold that office, Mr George Selbie, his successor, was of this date (16 Decr. 1858), sisted in his room.

Of this date (11 Jany. 1859), the term for proving was

(p. 61) was circumduced, and great avizandum made.

The division of the Commonty having thus been completed to the satisfaction of the whole parties interested therein, they have now agreed that the same should be formally completed by decree, and the parties being anxious to save the expense of making up a prepared State of Proof, Memorial and Abstract, they humbly move the Court to dispense with a prepared State of Proof, Memorial and Abstract and to pronounce decree in terms of the adjusted Interlocutor appended and to allow decree to go out and be extracted ad interim at the common expense, Quoad ultra, to remit the remaining cause to the Lord Ordinary to determine as to the custody of the Plan of the Commonty

(p. 62) Commonty and Division, thereof in process, and as to the terms on which access is to be given to all parties interested therein, and to determine all questions of expenses;

and in respect of the length of the adjusted Interlocutor, to dispense with the writing out thereof by the hand of the Clerk of Court, and to authorise a print thereof to be put up with the Interlocutor Sheet as a part thereof and to be signed as the Interlocutor of Court ~~in~~ in causa; also to grant warrant to and authorize the Extractor of Court to embody a printed copy hereof in the Extract of said decree, instead of inserting the same in manuscript.

(Sgd.) And. T. Boyle – for Sir J. Dalrymple Horn Elphinstone – Pursuer.

(Sgd.) Norman Macpherson – for Lord Forbes & others.

(p. 63) (No. 230 of process)

Additional
Joint Minute

For

Sir James Dalrymple Horn Elphinstone
of Horn and Logie-Elphinstone, Baronet – Pursuer,
and for

The Right Hon. Walter Forbes; Baron Forbes; Lieut.-Col. Henry Knight Erskine of Pittodrie; Colonel Charles Leslie of Balquhain; Lancelot Iveson Esq., of Blackbank in the County of York; Robert Grant Esq., of Druminnor; James Gordon Esq., of Manar; and John Robertson Esq., Advocate in Aberdeen, accepting and surviving Trustees of the late Robert Grant Esq., of Tillyfour; Sir James Grant of Monymusk, Bart.; and the said John Robertson as curator bonis to him; Sir Andrew Leith-Hay of Rannes, Knight of the Hanoverian Guelphic Order and his son; Lieut.-Col. Alexander Sebastian

(p. 64) Sebastian Leith Hay, commanding 93rd Highlanders; the said John Robertson as factor loco tutoris for Henry Lumsden Esq., of Auchendoir; Robert Grant Esq., of Druminnor; Henry Lumsden Esq., of Pitcaple; Theodore Gordon Esq., of Overhall; William Leslie Esq., of Rothnie and Drumrossie – Compeerer, and in right of Alexander Abercrombie formerly of Rothnie, all in the County of Aberdeen, Defenders

and for

The Right Rev. Dr James Kyle, residing at Preshome, near Fochabers, and the Rev. John Sutherland, residing in Aberdeen, Trustees of Robert Charles Grant Esq., of Balgowan; Alexander Sharp Shand Esq., of Drimmies; the Rev. Alexander Low, Minister of the Parish of Keig; the Rev. John Wilson, Minister of the

(p. 65) the Parish of Premnay; the Rev. James Greig, Minister of the Parish of Logie-Durno; Mr Gordon Raeburn, Schoolmaster of the said Parish of Keig; Mr John Mann, Schoolmaster of the said Parish of Premnay; Mr George Selbie, Schoolmaster of the said Parish of Logie-Durno - Compearers

in the

Action of Division of the Commonty of Benachie

Boyle for the said James Dalrymple Horn Elphinstone, Baronet, Pursuer & Macpherson for the Right Honourable Lord Forbes Baron Forbes and others Defenders and Compearers having an interest and entitled to share in the said Commonty –

Resumed the case – and stated that before decree had been pronounced, Hugh Lumsden Esq., of Pitcaple, one

(p. 66) one of the parties to the Joint Minute boxed to the Court of this date (27 Jany. 1859), had died, and the said Henry Lumsden, his son, now of Pitcaple, had been sisted in his room, and that parties now craved to be allowed to substitute the appended

adjusted Interlocutor for that previously submitted to the Court, and prayed the Court to pronounce decree in terms thereof.

(Sgd.) And. T. Boyle
(Sgd.) Norman Macpherson.

(p. 67) (No. 4 of process)

Interlocutors

Edinburgh 5th March 1859. The Lords in respect of the Joint Minute No. 228 of process and additional Joint Minute No. 230 of process of consent. Dispense with a prepared State of the Proof, Memorial and Abstract, approve of the Plan No. 226 of process, and find, in terms thereof that the said Commonty is bounded on the south by the Clochy Burn, from the south east corner of the said Commonty to a point to the west named the Heather Brig Stone, from that by a curved line running up the hill northwest past the ruins of a Smithy, thence westward to the north of Pitgaveny across the Howe of the Garbet to a cairn, and from the

(p. 68) the said cairn in a straight line to the Stone of Langheather, from that westward to the Garioch Ford, and from that to the Fir Tree and the Peaked Stone, through the Star Bog to a cairn at the top of the hill outside the wood fence belonging to Castle Forbes marked upon the said Plan L C F, and from that due north to the old dyke of Liklyhead, along which, to a point marked on the Plan L P, and from that along the march of the lands of Premnay contiguous to Lot II which is coloured pink on said Plan, first nearly due north, and then nearly due east, to a point below the hill of Tillymuick, marked on the said Plan P A, from that eastward along a black dotted line to the point marked L E P on

(p. 69) on the said Plan, and from that northwards by a march ditch to the old market road, from thence eastward along the old market road to the gravel pit marked on said plan on the lands of Pittodrie; from thence along the woods of Pittodrie southwestward to a burn; thence eastward to the Bead House marked on the said plan, and from thence southwards past Craignathunder to a point marked on said plan P B, and from that southwards in a straight line to the Boddach Stone, and from this also southwards past Cairncouty and the Gowk Stone to the Clochy Burn, all as laid down and coloured on the said plan; Find that the Commonty of Benachie, within the said boundaries, contains in all 4042 acres 2 roods

(p. 70) 2 roods and 12 poles, Imperial measure or thereby; Find that the whole grounds lying within the said boundary line herein before described form the subject of division in this action; Find that the pursuer Sir James Dalrymple Horn Elphinstone has an interest in the said Commonty and has proved (1) a right of property in the Commonty, in respect of his lands of Westhall, Ryehill, including part of Buchanstone, Raetirs and Mill of Cardin, the valued rent whereof is £748 6/8; (2) a right of servitude of pasturage, fuel, usage of taking feal, divot and heather in respect of his lands of Pitcaples Plough being part of the lands of Ardoyne, whereof the valued rent is £149; and (3) a servitude of fuel, taking feal, divot and heather

(p. 71) heather in respect of Pitmedden and Logie Elphinstone whereof the valued rent is £2342-4-10^s and that the said Sir James Dalrymple Horn Elphinstone is entitled to and shall accordingly take and receive, as the allotment of the said commonty effeiring to the

said rights that portion marked Lot IV on the Plan No. 226 of process, consisting of 872 acres, 25 poles or thereby, being contiguous to his lands of Ryehill and marked on the said plan by the letters A, L E; A, L E; A, L E; A, L E; A, L E, T; L E, T; L E, T A; L E, A B; L E, P B; L E, P; L E, P; under reservation of certain portions set apart for fuel to Henry Lumsden of Auchendoir; Robert Grant's Trustees; Lord Forbes; Theordore Gordon Esq., Sir Andrew Leith Hay and son; the

(p. 72) the Ministers and Schoolmasters of Keig, Premnay and Logie-Durno, Colonel Knight Erskine, Colonel Charles Leslie, William Leslie Esq., Alexander Sharp Shand Esq., and for Henry Lumsden Esq., of Pitcaple for his lands of Pitscurry, as laid down on the said plan, the mosses, with right of access to the same as set apart to the above parties, to be occupied by the said parties until the same are exhausted; and thereafter the solum to pertain and belong to the said Sir James Dalrymple Horn Elphinstone; Find that the said Robert Grant, for the lands of Ardoyne, has an interest in the said Common, and has established (1) a right of common property in respect of his lands of Buchanstone proper, being the three plough lands

(p. 73) lands, one of which formerly belonged to James Leslie, with Parkbrae, the second called Raetirs, and the third that plough which formerly belonged to Overhall, as also the town and lands of Ardoyne, and Mill thereof, and Hatton, whereof the valued rent is £229; (2) a servitude of pasturage, fuel and usage of taking of feal, divot and heather, in respect of his lands of Ardoyne proper, being lands claimed upon other than those in respect of which his claim of property has been allowed, whereof the valued rent is £140, and that the said Robert Grant is entitled to and shall accordingly take and receive, as the allotment of the said Commonty effeiring to the said rights, that portion thereof marked Lot III on the said plan, containing 327

(p. 74) 327 acres 2 roods 18 poles or thereby and marked on the said plan P, A; P A, P; A, P, T; A, L E, T; A, L E; A, L E; A, L E; A, L E; being contiguous to the lands of Ardoyne, but under reservation of certain portions of moss set apart for fuel for John Robertson, factor loco tutoris for Henry Lumsden Esq. of Auchendoir, in respect of his lands of Premnay, with right of access thereto, to be occupied by the said John Robertson as factor loco tutoris for the said Henry Lumsden, until the same is exhausted, and thereafter the solum to pertain and belong to the proprietor of Ardoyne; Find that the Right Honourable Walter Lord Forbes, has an interest in the said Commonty and has established (1) a right of property in the said Commonty in respect of his lands

(p. 75) lands of Puttachie, including Glentowns and Auchter Keig, whereof the valued rent has been agreed to be taken for the purposes of this process at £145-6/8; & (2) a servitude of fuel, usage of taking feal and divot and heather, in respect of his lands of Pittendreich, Tulloch, Finzeach, and Kinraigie; whereof it has been agreed that the valued rent for the purposes of this process should be taken to be £463, and that the said Lord Forbes is entitled to and shall accordingly take and receive, as the allotment of the said Commonty effeiring to the said rights, that portion thereof marked Lot IX on said

plan and consisting of 133 Imperial acres or thereby, and marked on the said plan L, C F; L, P C F; P, T C F, and bounded on the east

(p. 76) east from that portion of the Commonty marked Lot VIII, by the middle burn, from the point marked P, T, C F, to the Garioch Ford, being contiguous to the lands of Castle Forbes, together with 19 acres or thereby of moss set apart upon Lot IV; declaring that when the fuel is exhausted, the solum of the said portion of moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that the said Lieutenant-Colonel Henry Knight Erskine of Pittodrie has an interest in the said Commonty and has established (1) a right of property therein in respect of his lands of Newlands, Kirktown, Torris, Carden, Harthill and Old Harthill, whereof the valued rent is £373-3/- (2) a servitude of pasturage and

(p. 77) and fuel and usage of taking feal, divot and heather, in respect of his lands of Drumdurno, Dorelethen &c. whereof the valued rent is £565-3-2^s and that the said Lieutenant Colonel Knight Erskine is entitled to, and shall take and receive as the allotment of the said Commonty effeiring to said rights, that portion thereof marked Lot V on said plan, and containing 655 acres 2 roods 20 poles, marked L E, P; L E, P; L E, P, B; P, B; and separated at the northwest by a march ditch running from the *point* marked L E, P to the old market road, being contiguous to his lands of Pittodrie, together with 6 acres or thereby of moss set apart upon Lot IV; declaring that when the fuel is exhausted, the solum

(p. 78) solum of the said portion of moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that the said Sir James Grant of Monymusk and John Robertson, Advocate in Aberdeen, his curator bonis have an interest in the said Commonty and have established (1) a right of property therein in respect of his lands of Afforsk &c. whereof the valued rent is £80, in respect of which he is entitled to, and shall take and receive as the allotment of the said commonty effeiring to his said right, that portion thereof marked Lot VII on the said plan and containing 71 acres 2 roods 15 poles or thereby and marked L E, T, A; L E, A, B; and A, T, B; meeting his lands of Afforsk at the Heather Brig

(p.79) Brig Stone, together with 2 acres or thereby of moss set apart upon Lot VIII; declaring that when the fuel is exhausted the solum of the said portion of moss shall pertain in property to Lancelot Iveson Esq., of Blackbank, in the County of York; Robert Grant Esq., of Druminnor; James Gordon Esq., of Manar; and John Robertson Esq., Advocate in Aberdeen, accepting and surviving Trustees of the late Robert Grant of Tillyfour; Find that the said John Robertson as factor loco tutoris to Henry Lumsden of Auchendoir has an interest in the said Commonty and has established (1) a right of property therein in respect of his lands of Premnay and others, the valued rent whereof is £1082-13/4; (2) a servitude of fuel, and usage

(p. 80) usage of taking feal, divot and heather in respect of his lands of Harlaw, whereof the valued rent is £158; Find that the said John Robertson as factor loco tutoris aforesaid

is entitled to, and shall take and receive as the allotment of the said Commony effeiring to the said rights, that portion thereof marked Lot II on the said plan and containing 910 acres 2 roods and 29 poles or thereby and marked P, A; P, A, P; A, P, T; P, T, C F; L, P, C F; P, L, P; and P, L; on the said plan or thereby, contiguous to his said lands of Premnay together with 7 acres 3 roods 25 poles of moss set apart upon Lot III; declaring that when the fuel is exhausted the solum of the said portion of moss shall belong in property to

(p. 81) to Robert Grant Esq., of Druminnor proprietor of Ardoyne, and 3 roods or thereby of moss set apart on Lot VIII, declaring that when the fuel is exhausted, the solum of the said portion of moss shall belong in property to Lancelot Iveson Esq., of Blackbank, in the County of York; Robert Grant Esq., of Druminnor; James Gordon Esq., of Manar; and John Robertson, Advocate in Aberdeen, accepting and surviving trustees of the late Robert Grant Esq., of Tillyfour, the said two portions of moss being set apart for his lands of Premnay, and 5 acres or thereby set apart upon Lot IV for his lands of Harlaw; declaring that when the fuel is exhausted, the solum of the said portion of moss

(p. 82) moss shall belong in property to Sir James Dalrymple Horn Elphinstone; Find that the said Lancelot Iveson, Robert Grant, James Gordon, and John Robertson, the trustees of the late Robert Grant Esq., of Tillyfour have an interest in the said Commony and have established a right of property therein in respect of the lands of Tillyfour and of Braco, whereof the valued rent is £375-13/4; That the said Lancelot Iveson, Robert Grant, James Gordon, and John Robertson, trustees foresaid, are entitled to, and shall take and receive as the allotment effeiring to the said right that portion of land marked Lot VIII on said plan, and extending to 420 acres or thereby, and marked on the said plan

(p. 83) T, A, B; L E, T A; L E, T; A, L E, T; A, P, T; P, T, C F; and bounded on the west from Lot IX by the middle burn, from the point marked P, T, C F, to the Garioch Ford, being contiguous to the lands of Tillyfour, but under reservation of the portion of moss set apart to the said John Robertson, factor loco tutoris to Henry Lumsden Esq. of Auchendoir to the extent of 3 roods or thereby; the portion of moss set apart to Sir Andrew Leith Hay and son to the extent of 18 acres or thereby; the portion of moss set apart to Henry Lumsden Esq. of Pitcaple to the extent of 3 acres 1 rood or thereby; and the portion of the moss set apart to the said Sir James Grant, and the said John Robertson, his curator bonis, to the extent

(p. 84) extent of 2 acres or thereby; to be occupied by the said parties respectively till the fuel is exhausted, and thereafter the solum thereof to belong to the said Lancelot Iveson, Robert Grant, James Gordon, and John Robertson, the Trustees of the said Robert Grant Esq; Find that Sir Andrew Leith Hay and his son Lieutenant-Colonel Alexander Sebastian Leith Hay have an interest in the said Commony and have established (1) a right of property therein in respect of their lands of Edingarioch and Brindy, Auchnagathel &c. whereof the valued rent is £266-13/4; and (2) a servitude of fuel, and usage of taking feal, and divot and heather in respect of their lands of Leslie, Flindars &c. whereof the valued rental is £2210-6/8^s Find

(p. 85) Find that the said Sir Andrew Leith Hay and Lieutenant Colonel Alexander Sebastian Leith Hay are entitled to, and shall take and receive as the allotment of the said commonty effeiring to their said rights, that portion of land marked Lot I on said plan, containing 335 acres or thereby and marked on the said plan L, P; L, P, P; L, P, C F; and L, C F; being contiguous to their lands, marked on said plan Lands of Leithhall; together with 22 acres of moss or thereby set apart upon Lot IV, declaring that when the fuel is exhausted, the solum of the said portion of moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; and 18 acres of moss or thereby set apart upon

(p. 86) upon Lot VIII, declaring that when the fuel is exhausted the solum of the said portion of moss shall belong to the said Lancelot Iveson, Robert Grant, James Gordon, and John Robertson trustees of Robert Grant Esq., of Tillyfour; Find that Colonel Charles Leslie of Balquhain has an interest in the said commonty and has proved (1) a right of property therein in respect of his lands of Balquhain, Whitecross and Tulloch, whereof the valued rent is £473.1/8^s and (2) a servitude of fuel, and usage of taking feal, divot and heather in respect of his lands of Aultown, Nethertown and Middletown of Knockenlewis, whereof the valued rent is £360; and that the said Colonel Charles Leslie is entitled to and shall take and receive, as the allotment

(p. 87) allotment of the said commonty effeiring to his said rights, that portion of land marked Lot VI on the said plan, containing 316 acres 3 roods 25 poles or thereby and marked T, A, B; L E, A B; L E, P, B; and P, B; and separated on the east from the lands of Pittodrie by a line drawn from the point marked P, B, to the Boddach Stone; and on the south from the lands of Afforsk and Braco by the Clochy Burn, being contiguous to his lands of Balquhain together with 7 acres 2 roods or thereby of moss set apart upon Lot IV, declaring that when the fuel is exhausted the solum of the said portion of moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that William

(p. 88) William Leslie Esq., of Drumrossie, has an interest in the said commonty, and has proved a servitude of fuel, and usage of taking feal, divot and heather, in respect of his lands of Rothnie and Drumrossie, whereof the valued rent is £518.17/- in respect whereof there has been set apart for him; and he shall accordingly have right to 4 acres 1 rood 20 poles or thereby of moss on Lot IV declaring that when the fuel is exhausted, the solum of the said moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that Henry Lumsden Esq. of Pitcaple has an interest in the said Commonty, and has proved a servitude of fuel, and usage of taking feal, divot, and heather in respect of his lands of Pitcaple and

(p. 89) and Pitscurry whereof the valued rent is £458-3-8, in respect whereof there has been set apart for him and he shall accordingly have right to (1) 3 acres 1 rood or thereby upon Lot VIII, for his lands of Pitcaple, declaring that when the fuel is exhausted, the solum of said moss shall belong in property to Lancelot Iveson, Robert Grant, James Gordon and John Robertson Trustees of Robert Grant Esq. of Tillyfour; and (2) 3 roods of moss for his lands of Pitscurry upon Lot IV, declaring that when the fuel is exhausted,

the solum of the said 3 roods shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that Theodore Gordon Esq. of Overhall, has an interest in the said Commonty

(p. 90) Commonty, and has proved a servitude of fuel and usage of taking feal, divot and heather, in respect of his lands of Overhall whereof the valued rent is £212, in respect whereof there has been set apart for him, and he shall accordingly have right to 5 acres 2 roods or thereby of moss upon Lot IV declaring that when the fuel is exhausted the solum of the said moss shall belong to the said Sir James Dalrymple Horn Elphinstone; Find that the said Right Reverend Dr James Kyle, and the said Right Reverend John Sutherland Trustees of the said deceased Robert Charles Grant Esq of Balgowan, have an interest in the said commonty and have proved a servitude of fuel and usage of taking feal, divot and heather in

(p. 91) in respect of their said lands of Balgowan, whereof the valued rent is £140, in respect whereof there has been set apart for them, and they shall accordingly have right to 5 acres or thereby of moss on Lot IV, declaring that when the fuel is exhausted the solum of the said moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that the said Alexander Sharp Shand Esq. of Drimmies, has an interest in the said commonty and has proved a servitude of fuel and usage of taking feal, divot and heather in respect of the said lands of Drimmies, whereof the valued rent is £124, in respect whereof there has been set apart for him, and he shall accordingly have right to 1 acre 2 roods 20 poles or

(p. 92) or thereby of moss upon Lot IV declaring that when the fuel is exhausted the solum of the said moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; Find that the said Reverend Alexander Low, Reverend John Wilson and Reverend James Greig and the said Messrs. Gordon, Raeburn, John Mann and George Selbie, the Ministers and Schoolmasters of the Parishes of Keig, Premnay and Logie-Durno (or Chapel of Garioch) have established a usage of taking fuel and winning and taking heather, feal and divot in respect whereof there has been allotted to them and their successors in office, and they and their said successors in office shall accordingly have right to 1 acre 3 roods or thereby of moss on Lot IV, declaring that

(p. 93) that when the fuel is exhausted, the solum of the said moss shall belong in property to the said Sir James Dalrymple Horn Elphinstone; and decern and declare accordingly the said division or shares so allotted to pertain and belong to the foresaid parties respectively, heritably & irredeemably; Find that none of the claimants shall in future have any right of pasture over any portion of the commonty other than the portions allotted to them in property respectively as above, and discharge each of the pursuers and whole defenders and comparers from interfering in all time coming with the respective boundaries above set forth, and with the respective shares or divisions so allotted to the others; Find that the whole of the foresaid

(p. 94) foresaid several allotments have been divided and marked off on the ground, conformably to the lines of division and march stones delineated on the said plan, as beforementioned; Find that the several allotments, including the several portions of ground set apart as aforesaid and the ground occupied by the roads of access throughout the said commonty all as delineated on the said plan, do exhaust the total contents of the said commonty; Find that those parties only and their successors, who in the course of the present process have established a right to the mosses situated within the common, shall, so long as the portions allocated to them respectively remain unexhausted have access to the same by the

(p. 95) the roads (thirty feet wide) set apart for the purpose, and laid down in the direction coloured red on the said plan, and by these roads only, all other roads hitherto used for that or any other servitude over the common being henceforth merged in the common allocated in private property to the several heritors as aforesaid; Repel all claims upon the said commonty in so far as inconsistent with the previous findings, and allow decree to the foregoing effect to go out and be extracted ad interim at the common expense; Find the said parties who have been found entitled to foresaid shares, liable jointly and severally in the common expenses incurred in the process of division, and decern Quoad

(p. 96) Quoad ultra remit the whole remaining cause to the Lord Ordinary, to determine as to the custody of the plan of the Commonty and division thereof in process and as to the terms on which access thereto is to be given to all parties interested therein, and to determine all questions of expenses and other questions remaining undetermined; And grant warrant to authorise the Extractor of Court to embody a printed copy hereof in the Extract of said decree instead of inserting the same in manuscript.

(Sgd.) Dun. McNeill LLD

(p. 97) 19 July 1859. Lord Neaves
Act Macpherson. Alt.

The Lord Ordinary appoints the Plan of the Commonty & Division thereof No.226 of process to be placed in the custody of the Sheriff Clerk of Aberdeenshire and to remain in his office at Aberdeen - and allows all parties interested in said Division right of access to the said plan on payment to the said Sheriff Clerk of a fee of five shillings for each inspection thereof.

(Sgd.) Charles Neaves

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Original document transcribed by members of the
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(led by Alison Kennedy)
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