ALEXANDER MACKENZIE'S PETITION

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THE LORD ORDINARY THROUGH THE PETITIONERS HOPE THAT APON A PROPER EXPLANATION TO YOUR LORD SHIPS THESE WILL CLEARY APPEAR TO YOU NOT TO BE WELL FOUNDED. IN ORDER TO SHOW YOUR LORDSHIPS TO WHAT PARTICULAR FUND THE SUM IN MEDIO BELONGS AS WELL AS TO SATISFY YOU OF THE PROPRIETY OF THE INTERFERENCE OF THE COURT IN THIS INSTANCE, IT WILL BE NECESSARY FOR THE PETITIONERS TO TROUBLE YOU WITH A DETAIL WHICH MAY APPEAR AT FIRST SIGHT RATHER COMPLICATED AND MINUTE. BUT THE PETITIONERS ARE CONFIDENT THAT A STATEMENT OF THIS SORT WILL ENABLE THE COURT WITH THE LEAST TROUBLE AT LAST TO DETERMINE THE MATTER AT ISSUE AND THEY FEEL THEMSELVES BOUND TO PUT THE COURT FULLY IN POSSESSION OF THE HISTORY OF THE CASE AS THEY KNOW THAT COUNTER STATEMENTS WILL BE PRESENTED TO YOUR LORDSHIPS FROM ANY OTHER PARTY ALL INTERESTED, BEING HERE FULLY SATISFIED OF THE PROPRIETY OF THE MEASURES WHICH THE PETITIONERS MOVED THE LORD ORDINARY TO SANCTION.

GEORGE VISCOUNT TARBAT AFTERWARDS EARL OF CROMARTY, EXECUTED A STRICT ENTAIL IN 1688 OF THE BARONY OF ROYSTON IN FAVOUR OF JAMES MACKENZIE, HIS YOUNGEST SON, AFTERWARDS LORD ROYSTON AND THE HEIRS MALE OF HIS BODY WHOMFAILING, OF SIR KENNETH MCKENZIE, HIS SECOND LAWFUL SON, AND THEHEIRS MALE OF HIS BODY; WHOM FAILING, JOHN, MASTER OF TARBAT,AFTERWARDS SECOND EARL OF CROMARTY THE VISCOUNTS ELDEST SON, AND THE HEIRS-MALE OF HIS BODY WHOMFAILING;

OF THE HEIRS MALE TO BE PROCREATED OF THE VISCOUNTS BODY WHOMFAILING, ANY OTHER PERSON OR PERSONS TO BE NOMINATED AND APPOINTED BY HIM;WHOMFAILING, HIS OWN OTHER HEIRS MALE WHATSOEVER; WHOM ALL FAILING HIS OWN HEIRS AND ASSIGNEES WHATSOEVER.

IN 1739 LORD ROYSTON THE INSTITUTE IN THE ENTAIL OBTAINED AN ACT OF PARLIAMENT AUTHORISING A SALE OF THE ESTATE, FOR THE PURPOSE OF DISCHARGING DEBTS WITH WHICH IT STOOD AFFECTED. BTY THIS ACT IT WAS DECLARED LAWFUL TO LORD ROYSTON, WITH THECONSCENT OF CERTAIN TRUSTEES THEREIN NAMED TO SELL THE BARONY OF ROYSTON OF ROYSTON, NOTWITHSTANDING THE CONDITIONS IN THE ENTAIL BUT WITH THIS PROVISO THAT THE TRUSTEES SHOULD LAY OUT THE RESIDUE AND SURPLUS OF THE PRICE IN THE PURCHASE OF OTHER LANDS TO BE SETTLED AND PROVIDED TO THE SAID SIR JAMES MCKENZIE AND OTHER HEIRS OF ENTAIL OF THE ESTATE OF ROYSTON: SUBJECT TO THE RESTRICTIONS AND LIMITATIONS CONTAINED IN THE ENTAIL AND, IN THE MEAN TIME, THAT THEY SHOULD PLACE OUT SUCH RESIDUE OR SURPLUS AT INTEREST UPON REAL OR OTHER SUFFICIENT SECURITY THE ESTATES OF ROYSTON WAS SOLD UNDER AUTHORITY OF THIS ACT OF PARLIAMENT AND PURCHASED BY JOHN DUKE OF ARGYLL AT THE PRICE OF 7000L WHICH WAS PAID TO LORD ROYSTON. LORD ROYSTON DIED IN 1744. HE LEFT NO HEIRS MALE OF HIS OWN BODY BUT HE LEFT A DAUGHTER, WHO WAS MARRIED TO SIR JOHN STEWART OF GRANTULLY THE REPRESENTATIVE OF WHICH FAMILY IS STILL THE HEIR OF LINE OF LORD ROYSTON. THE ROYSTON ESTATE BEING AS ALREADY MENTIONED DESTINED IN THE FIRST INSTANCE TO MALE SUBSTITUTES, THE SUCCESSION TO IT OR RATHER TO THE

RESIDUE OF THE PRICE NOW OPENED TO SIR GEORGE MCKENZIE OF GRANDVILLE, WHO WAS HEIR MALE OF SIR KENNETH MCKENZIE, THE FIRST SUBSTITUTE IN THE TAILZIE. THE RESIDUE OF THE PRICE OF ROYSTON, HOWEVER, REMAINED IN THE HANDS OF LORD ROYSTON'S HEIR OF LINE SIR JOHN STEWART WHO PAID THE INTEREST OF THE MONEY TO THE HEIR OF ENTAIL. IT NOW APPEARS THAT THE SALE OF ROYSTON HAD BEEN A COLLUSIVE MEASURE ALTOGETHER ON THE PART OF LORD ROYSTON, TO DEFEAT THE HEIRS OF ENTAIL, AND TO FAVOUR HISOWN DAUGHTER, WHO COULD NOT INHERIT THE ESTATE, AS IT WAS A MALE TAILZIE. LORD ROYSTON THEREFOR, MUSTERED UP A NUMBER OF FICTITTIOUS DEBTS AS DUE BY THE ORIGINAL TAILZIER, AND GOT THE ACT OF PARLIAMENT PASSED, AUTHORISING HIM TO SELL THE ESTATE. THIS CAME SOON AFTER HIS LORDSHIPS DEATH HOWEVER, TO BE DISCOVERED; AN ACTION WAS BROUGHT AGAINST HIS HEIR OF ENTAIL, TO COMPEL HIM TO ACCOUNT TO THE HEIRS OF ENTAIL FOR THE PRICE OF THE ESTATE. THIS ACTION WAS AT THE INSTANCE OF SIR GEORGE MCKENZIE OF GRANDVILLE, THE HEIR MALE AND TAILZIE, IN ROYSTON, AND IT WAS BROUGHT BEFORE THE COURT OF SESSION, AGAINST SIR JOHN STEWART, THE GRANDSON AND HEIR OF LINE OF LORD ROYSTON, AND AGAINST THE TRUSTEES APPOINTED BY THE ACT OF PARLIAMENT, FOR SELLING THE ENTAILED ESTATE TO ACCOUNT FOR THE PRICE OF THE ESTATE. DURING THE DEPENDENCE OF THIS ACTION, SIR GEORGE MCKENZIE DIED; BUT IT WAS AFTERWARDS PROSECUTED TO A CONCLUSION, BY SIR KENNETH MCKENZIE, HIS BROTHER, WHO SUCCEEDED TO HIM. IN 1758, THIS COURT PRONOUNCED A DECREE IN THIS ACTION, FINDING. THAT AFTER PAYMENT OF ALL DEBTS WITH WHICH THE ESTATE OF ROYSTON WAS JUSTLY

CHARGEABLE, THERE REMAINED A FREE RESIDUE OF THE PRICE, AMOUNTING TO L.4813:17:9 AND ONE THIRD STERLING; AND ORDAINED SIR JOHN STEWART TO MAKE PAYMENT OF THE SUM, TO BE LAID OUT AND EMPLOYED IN CONFORMITY TO THE DEED OF ENTAIL, AND TO THE DIRECTIONS OF THE SAID ACT OF PARLIAMENT, AT THE SIGHT AND BY THE APPROBATION OF THE SUPREME COURT. THIS WAS KEENLY LITIGATED QUESTION AND A SHORT HISTORY OF IT WILL BE FOUND IN MOST OF THE PRINTED COLLECTIONS OF DECISIONS FOR THE TIME. IT IS NOTICED IN THE DICTIONARY. (VOLUME IV VOCE TAILZIE) IT IS REPORTED BY LORD KAIMES IN HIS SELECT DECISIONS AND IN THE FACULTY COLLECTION BOTH UNDER DATE OF 1ST JULY 1752. THE QUESTION THEN WAS, WHETHER YOUR LORDSHIPS WERE ENTITLED TO ENTER INTO AN EXPISCATION OF A SALE WHICH HAD BEEN AUTHORIZED, AND OF DEBTS WHICH HAD BEEN SUSTAINED BY A SPECIAL ACT OF PARLIAMENT PASSED FOR THE PURPOSE. YOUR LORDSHIPS PREDECESSORS AT FIRST THOUGHT THAT YOU HAD NO TITLE TO INTERFERE IN SUCH A CASE; AND A DECISION WAS PRONOUNCED ACCORDINGLY TO THIS EFFECT. BUT THE CASE WAS CARRIED TO THE HOUSE OF LORDS, WHEN THE PREVIOUS JUDGEMENT HERE WAS REVERSED; AND IT WAS DECLARED COMPETENT FOR THIS COURT, BY THE INHERENT JURISDICTION WHICH YOUR LODSHIPS HAVE IN EVERY CAUSE OF FRAUD OR VIOLATED TRUST, TO TAKE COGNIZANCE OF LORD ROYSTON'S PROCEEDINGS, AND TO SEE JUSTICE DONE TO THE HEIRS OF TAILZIE OF ROYSTON, WHO HAD BEEN DEPRIVED OF A VALUABLE PROPERTY WHICH THEY WERE UNQUESTIONABLY ENTITLED TO RECOVER. IN THIS WAY THE DECREET BEFORE MENTIONED, AT SIR KENNETH MCKENZIE'S INSTANCE IN 1758, WAS ULTIMATELY PRONOUNCED. THE COURT THEN

ASCERTAINED THE BALANCE DUE TO THE HEIRS OF ENTAIL BY LORD ROYSTON'S HEIR OF LINE TO BE AS BEFORE STATED £4813:17:9. AND THIS SUM THE COURT THEN APPOINTED TO BE INVESTED AT THEIR SIGHT FOR BEHOOF OF THE HEIRS OF ENTAIL NOT FROM ANY PARLIAMENTARY ENACTMENT IMPERATIVE UPON THE COURT BUT SIMPLY BECAUSE THE COURT EX PROPRIOMOTU HELD IT THEIR PROVINCE IN THE PARTICULAR CIRCUMSTANCES TO SEE THE MONEY SECURED OR AGAIN INVESTED IN HERITABLE PROPERTY FOR THE BENEFIT OF THE HEIRS OF TAILZIE. SIR KENNETH MCKENZIE HOWEVER DIED SOON AFTER THIS DECREE WAS PRONOUNCED WITHOUT ISSUE MALE. THE SUCCESSION TO THE ROYSTON RESIDUE THEN OPENED TO GEORGE EARL OF CROMARTY WHO WAS ELDEST SON AND CONSEQUENTLY HEIR MALE OF THE BODY OF JOHN MASTER OF TARBAT THE SUBSTITUTE SECOND IN ORDER OF TAILZIE. THE EARL OF CROMARTY, HOWEVER HAVING BEEN ATTAINED IN 1746 HIS RIGHT TO THE ANNUAL PRODUCE OF THE ROYSTON RESIDUE BECAME VESTED IN THE CROWN WHO REMAINED IN THE RIGHT OF THE HEIR OF ENTAIL OF ROYSTON TILL 1789. FOR THOUGH THE ESTATE OF CROMARTY WAS RESTORED TO JOHN MCKENZIE LORD CROMARTIE'S ELDEST SON KNOWN BY THE NAME OF LORD MCLEOD HIS INTEREST IN THE ROYSTON RESIDUE WAS FROM SOME OMISSION NOT RESTORED AT THE SAME TIME. IN 1789 LORD MCLEOD ONLY SON OF THE ATTAINED EARL OF CROMARTY HAVING DIED WITHOUT ISSUE THE SUCCESSION TO THE ROYSTON RESIDUE OPENED TO THE LATE KENNETH MACKENZIE OF CROMARTIE WHO WAS NOW HEIR MALE OF JOHN MASTER OF TARBAT BEING ELDEST SON OF THE HONOURABLE RODERICK MCKENZIE WHO WAS SECOND SON OF THE MASTER, AND BROTHER OF THE ATTAINED

EARL. KENNETH MCKENZIE WAS ALSO BOTH HEIR MALE AND HEIR OF TAILZIE AND PROVISION UNDER AN ENTAIL EXECUTED BY LORD MCLEOD, THE LAST PROPRIETOR IN THE CROMARTY STATES. KENNETH MCKENZIE DIED IN 1796. HE WAS SUCCEEDED AS HEIR MALE AND OF TAILZIE IN THE ROYSTON RESIDUE, BY COLONEL MCKENZIE THE FATHER OF THE PARTY WHO NOW ADDRESSES YOUR LORDSHIPS. THE LATTER EXPEDE A SERVICE AS HEIR MALE OF GEORGE IST EARL OF CROMARTIE, THE MAKER OF THE TAILZIE COLONEL MCKENZIE BEING GREAT-GRANDSON OF ALEXANDER MCKENZIE, A BROTHER OF THE NOBLE EARL. IN THE CROMARTIE ESTATES IN CONSEQUENCE OF LORD MCLEODS ENTAIL, MR KENNETH MCKENZIE, WAS SUCCEEDED BY LADY ELIBANK, SISTER OF LORD MCLEOD, AND ELDEST DAUGHTER OF GEORGE, THE ATTAINED EARL OF CROMARTY. LADY ELIBANK HAS SINCE BEEN SUCCEEDED IN THOSE ESTATES BY HER DAUGHTER, THE HONOURABLE MRS. HAY MCKENZIE OF CROMARTIE, WHO HAS MADE REGULAR APPEARANCE IN THIS QUESTION. FROM THE PRECEDING NARRITIVE YOUR LORDSHIPS WILL OBSERVE, THAT THE RIGHT TO THE ROYSTON AND CROMARTY ESTATES WERE VESTED FOR SOME TIME IN THE SAME INDIVIDUALS, GEORGE LORD CROMARTIE, LORD MCLEOD, AND KENNETH MCKENZIE; BUT THAT THE SUCCESSION SEPERATED AFTER THE DEATH OF KENNETH MCKENZIE OF CROMARTIE IN 1796. ALTHOUGH THE DECREE AT SIR KENNETH MCKENZIE'S INSTANCE WAS PRONOUNCED IN THE TERMS ALREADY MENTIONED IN 1758, YET, FROM SIR KENNETH'S DEATH, SOON AFTERWARDS THE RESIDUE OF ROYSTON PRICE REMAINED IN THE HANDS OF SIR JOHN STEWART OF GRANTULLY, LORD ROYSTON'S HEIR OF LINE FOR MANY YEARS. BUT IT WAS RECOVERED FROM HIM BY MR.

KENNETH MCKENZIE, LAST OF CROMARTIE, SHORTLY BEFORE HIS DEATH, IN THE FOLLOWING MANNER: MR. KENNETH MCKENZIE, QUA HEIR OF TAILZIE IN ROYSTON, BROUGHT AN ACTION IN 1791 BEFORE YOUR LORDSHIPS AGAINST THE PRESENT SIR JOHN STEWART, CONCLUDING FOR PAYMENT OF THE BALANCE OF THE PRICE OF ROYSTON. IN BAR OF THIS ACTION IT WAS PLEADED, THAT SIR JOHN WAS NOT IN SAFETY TO PAY THE SUM DEMANDED BY MR. MCKENZIE, THE PURSUER, AS BY THE FORMER DECREE OBTAINED BY SIR KENNETH MCKENZIE IN 1758, THE MONEY WAS DIRECTED TO BE LAID OUT IN CONFORMITY TO THE DEED OF ENTAIL OF THE ESTATE OF ROYSTON, AND ACCORDING TO THE DIRECTIONS OF THE ACT OF PARLIAMENT AUTHORISING THE SALE OF THAT ESTATE, AT THE SIGHT AND BY THE APPROBATION OF YOUR LORDSHIPS. FOR OBVIATING THIS OBJECTION KENNETH MCKENZIE STATED THAT HE HIMSELF COULD GIVE UNQUESTIONABLE SECURITY FOR THE MONEY FOR THE ESTATE OF CROMARTY HAD BEEN RESTORED TO HIS PREDECESSOR UPON THE CONDITION OF MAKING PAYMENT TO THE CROWN OF £19,000 STERLING WHICH SUM WAS, BOTH BY AN ACT OF PARLIAMENT AUTHORISING THE RESTORATION OF THE FORFEITED ESTATES, AND BY THE SUBSEQUENT GRANT OF CROMARTY ESTATE FROM THE CROWN, DECLARED TO BE A REAL BURDEN ON THE PROPERTY RESTORED. THE DEBT TO THE CROWN WAS AT THAT PERIOD OF MR. KENNETH MCKENZIE'S SUCCESSION, REDUCED TO £4818:16s:2 AND ELEVEN TWELVES BEING ONLY £5, MORE THAN THE RESIDUE OF THE PRICE OF ROYSTON. KENNETH MCKENZIE THEREFOR PROPOSED, THAT SIR JOHN STEWARD OF GRANDTULLY SHOULD PAY THE ROSTON RESIDUE INTO THE EXCHEQUER, IN SATISFACTION OF THIS DEBT ANDIT WAS SAID THE BARONS OF

EXCHEQUER WOULD GRANT AN ASSIGNATION OF THE CLAIMS WHICH THE CROWN HAD ON THE CROMARTIE ESTATES, IN FAVOUR OF MR. KENNETH MCKENZIE AND OTHER HEIRS OF THE ENTAIL OF ROYSTON. THE PROPOSAL MET WITH THE APPROBATION OF YOUR LORDSHIPS, AND THEREFORE, OF THIS DATE, DECREE WAS PRONOUNCED IN MR. KENNETH MCKENZIE'S ACTION AGAINST SIR JOHN STEWART, FINDING, THAT SIR JOHN STEWARD, AS REPRESENTING SIR JAMES MCKENZIE HIS GRANDFATHER, MUST PAY UP THE PRINCIPAL SUM LIBELLED, BEING THE REVERSION OF THE ESTATE OF ROYSTON, WITH THE INTEREST THEREOF; AND DESCERNING AND ORDAINING THE SAID SIR JOHN STEWART, DEFENDER, TO MAKE PAYMENT TO THE SAID KENNETH MCKENZIE, PURSUER, OF THE AFORESAID SUM OF£4813:17:9 AND ONE THIRD STERLING, WITH THE INTEREST DUE THEREON, AND THIS IN ORDER THAT THE SAID PRINCIPAL SUM MAY BE PAID INTO EXCHEQUER, TO ACCOUNT OF THE SUM DUE TO THE GOVERNMENT BY THE ESTATE OF CROMARTIE, UPON AN ASSIGNATION OF THE SUM SO PAID, TO BE GRANTED TO THEM PURSUER AND THE HEIRS MALE OF HIS BODY; WHOM FAILING, TO THE OTHER HEIRS OF THE SAID ESTATE OF ROYSTON. IN CONSEQUENCE OF THIS DECREE, SIR JOHN STEWART, ON THE 18TH OF SEPTEMBER 1795, PAID INTO THE EXCHEQUER THE SUM OF £4813:17:9 AND ONE THIRD BEING THE RESIDUE OF THE ROYSTON PRICE. THE ARREARS OF INTEREST WERE ALSO CHARGED. MR. KENNETH MCKENZIE AT THE SAME TIME PAID NTO THE EXCHEQUER THE SMALL BALANCE OF PRINCIPAL WHICH REMAINED DUE TO THE CROWN OF THE CROMARTY DEBT, MORE THAN THE AMOUNT OF THE ROYSTN RESIDUE CONSIGNED BY SIR JOHN STEWART. AT THAT TIME THIS PAYMENT WAS MADE, THE COURT OF EXCHEQUER WAS NOT SITTING.

INSTEAD THEREOF OF AN ASSIGNATION HAVING BEEN OBTAINED IN TERMS OF THE DECREE OF YOUR LORDSHIPS, THE ONLY VOUCHER GRANTED FOR THIS SUM WAS A RECEIPT FROM MR.BAIRD, DEPUTY KING'S REMEMBRANCER, IN THE FOLLING TERMS: EXCHEQUER CHAMBERS, EDINBURGH, 18TH SEPTEMBER 1795 RECEIVED FROM SIR JOHN STEWART OF GRANDTULLY, BARONET BY THE HANDS OF MR. WILLIAM MCDONALD, CLERK TO THE SIGNET, THE SUM OF £4813:17:9 AND ONE THIRD STERLING; AND FROM KENNETH MCKENZIE. ESQUIRE OF CROMARTIE, BY THEHANDS OF MR ALEXANDER DUNCAN, WRITER TO THE SIGNET, THE FURTHER SUM OF £1649:4:9-12THS STERLING, MAKING ALTOGETHER THE SUM OF L. 6463:2:7 STERLING, BEING THE AMOUNT OF THE DEBT, PRINCIPAL AND INTEREST, DUE TO THE CROWN OUT OF THE ESTATE OF CROMARTY, AND OF WHICH DEBT THE BARONS OF EXCHEQUER ARE TO GRANT A FULL DISCHARGE AND RENUNCIATION TO THE SAID KENNETH MCKENZIE ESQUIRE, AS HEIR OF ENTAIL OF THE SAID ESTATE OF CROMARTY, AND ALL OTHERS CONCERNED. IN WITNESS WHEREOF, &C. IN THE ENSUING EXCHEQUER TERM, AN APPLICATION WAS MADE TO THE BARONS FOR AN ASSIGNATION TO THE DEBT IN TERMS OF THE INTERLOCTOR OF YOUR LORDSHIPS; BUT THE BARONS DECLINED TO COMPLY WITH THE REQUEST, AND WOULD GRANT NOTHING BUT A RENUNCIATION; AND, EXCEPTING MR. BAIRD'S RECEIPT, NEITHER SIR JOHN STEWART NOR THE PROPRIETOR OF THE ESTATE OF CROMARTY HAVE EVER YET OBTAINED ANY OTHER VOUCHER FOR THE PAYMENT IN QUESTION. IT IS IN THIS STATE THE RIGHT TO THIS DEBT STILL REMAINS. IN THE YEAR 1801, THEREFORE, AN ACTION WAS BROUGHT INTO THE COURT AT THE INSTANCE OF THE PETITIONER'S FATHER, COLONEL MCKENZIE, TO WHOM, AS HEIR MALE WHATSOVER OF THE

CROMARTIE FAMILY, THE SUCCESSION TO AS HEIR MALE WHATSOEVER OF THE CROMARTY FAMILY, THE SUCCESSION TO THE ROYSTON RESIDUE HAS NOW OPENED, AGAINST MRS. JANE PETLEY, RELICT AND EXECUTRIX OF KENNETH MCKENZIE, LAST OF CROMARTY, NOW MRS MCLEOD OF GEANIES AND LADY ELIBANK, HEIRESS OF ENTAIL OF THE ESTATE OF CROMARTY, CONCLUDING ALTERNATIVELY AGAINST EACH OF THESE PARTIES, THAT THEY OUGHT AND SHOULD BE DECERNED AND ORDAINED, BY DECREE FORESAID, TO MAKE PAYMENT TO THE PURSUERS OF THE SAID PRINCIPAL SUM OF £4813:17:9 AND ONE THIRD STERLING, AND INTEREST THAT MAY BE DUE THEREON, SO AS THE SAID PRINCIPAL SUM MAY BE REINVESTED AT THE SIGHT, AND APPROBATION OF OUR SAID LORDS, ON LAND, OR OTHER GOOD AND SUFFICIENT SECURITY, PAYABLE TO THE PURSUER, THE SAID LIEUTENANT-COLONEL ROBERT MCKENZIE, AND OTHER HEIRS CALLED BY THE ENTAIL OF THE ESTATE OF ROYSTON; AND WITH AND UNDER THE CONDITION THEREIN EXPRESSED, AND IN TERMS OF THE ACT OF PARLIAMENT, AUTHORISING THE SALE OF THE SAID ESTATE OF ROYSTON. THIS ACTION CAME BEFORE LORD HERMAND, ORDINARY, BUT LITTLE PROCEDURE TOOK PLACE IN IT FOR A CONSIDERABLE TIME. IN THE MEAN TIME, CERTAIN PROCEEDINGS WERE GOING ON IN ANOTHER SET OF ACTIONS, TO BE IMMEDIATELY NOTICED, IN WHICH LORD BALMUTO, AS ORDINARY HAD OCCSION TO CONSIDER VERY FULLY THE SITUATION OF THE CLAIMS WHICH THE HEIRS OF ENTAIL OF ROYSTON HAVE ON THE ESTATE OF CROMARTIE; AND A FUND HAD ARISEN IN A QUESTION BEFORE HIS LORDSHIP, WHICH FELL CLEARLY TO BE ASSIGNED IN PART PAYMENT OF THE ROYSTON RESIDUE. THE DEBT DUE TO THE CROWN UPON THE ESTATE OF CROMARTIE TO ACCOUNT OF WHICH SIR JOHN STEWART PAID

INTO THE EXCHEQUER THE ABOVE MENTIONED SUM OF £4813:17:9 AND ONE THIRD STERLING IN THE VIEW OF OBTAINING AN ASSIGNATION IN FAVOUR OF THE ROYSTON HEIRS, IT HAS ALREADY BEEN SHEWN, WAS £4818:16:2 AND ELEVEN TWELTHS STERLING. THIS BALANCE WAS LEFT DUE TO THE CROWN BY LORD MCLEOD AT THE PERIOD OF HIS DEATH. BUT LORD MCLEOD HAD EXECUTED BOTH A TAILZIE OF THE CROMARTIE ESTATE, AND ALSO A DISPOSITION OF MOVEABLES IN FAVOUR OF HIS COUSIN KENNETH MCKENZIE LAST OF CROMARTY. BY THE LATTER DEED MR. MCKENZIE WAS BURDENED WITH PAYMENT OF ALL LORD MCLEODS DEBTS, AND PARTICULARLY OF THE BALANCE ALREADY MENTIONED, DUE TO THE CROWN, WHICH WAS AFTERWARDS PAID WITH ROYSTON MONEY. LORD MCLEOD, HOWEVER, HAD RIGHT TO A SUM OF £1200, IN THE FOLLOWING MANNER. HIS LORDSHIP WAS MARRIED IN 1786, TO THE HONOURABLE MISS FORBES, DAUGHTER OF LORD FORBES. IN THE CONTRACT OF MARRIAGE BETWEEN LORD AND LADY MCLEOD, LORD FORBES HAD BECOME BOUND TO PAY TO LORD MCLEOD, HIS HEIRS EXECUTORS, OR ASSIGNEES, THE SUM OF £1200 IN NAME OF TOCHER WITH HIS DAUGHTER AND AT THE TERM OF WHITSUNDAY OR MARTINMAS NEXT AFTER THE DEATH OF THE LORD AND LADY FORBES, WHO WERE CONSENTERS TO THE CONTRACT. ON THE DEATH OF THOSE NOBLE PERSONS, THEREFORE THIS SUM OF £1200 CAME TO BE IN BONIS OF LORD MCLEOD. MR. KENNETH MCKENZIE'S WIDOW, NOW MRS. MCLEOD OF GENIES, CLAIMED IT AS A PART OF LORD MCLEOD'S PERSONAL ESTATE CONVEYED TO HER HUSBAND, BY LORD MCLEODS SETTLEMENT AND ASSIGNED BY HER HUSBAND TO HER IN A SETTLEMENT OF HIS WHOLE PERSONAL ESTATE, WHICH HE HAD EXECUTED IN HER FAVOUR. ON THE

OTHE OTHER HAND, MRS. HAY MCKENZIE AND HER HUSBAND CLAIMED THIS SUM AS BEING A PART OF LORD MCLEOD'S FUNDS, WHICH WERE EXPRESSELY BURDENED BY HIS LORDSHIP'S DISPOSITION TO KENNETH MCKENZIE, WITH PAYMENT OF THE DEBT AFFECTING THE CROMARTIE ESTATE, THEN DUE TO THE CROWN, BUT NOW DUE TO THE ROYSTON HEIRS. IN ORDER TO ASCERTAIN TO WHICH PARTY THIS £1200 WAS DUE, THE PRESENT LORD FORBES RAISED A PROCESS OF MULTIPLEPOINDING BEFORE THIS COURT, CALLING MRS. MCLEOD OF GEANIES AND MRS.HAY MCKENZIE OF CROMARTIE AND HER HUSBAND AS PARTIES. MRS. HAY MCKENZIE AND HER HUSBAND AT THE TIME RAISED A COUNTER-ACTION AGAINST LORD FORBES, FOR THE PURPOSE OF CONSTITUTING THEIR RIGHT TO THE SUM DUE BY HIS LORDSHIPS FATHER TO LORD MCLEOID IN ORDER TO DISCHARGE PART OF THE DEBTS AFFECTING THE ESTATE OF CROMARTY WHICH LORD MCLEOD HAD APPOINTED TO BE DISCHARGED WITH HIS FUNDS. BOTH OF THESE ACTIONS CAME BEFORE LORD BALMUTO, ORDINARY AND WERE IMMEDIATELY CONJOINED. MINUTES OF DEBATE HAVING BEEN MADE UP BY MRS MCKENZIE AND MRS MCLEOD HIS LORDSHIP ON ADVISING THE DEBATE PRONOUNCED THE FOLLOWING INTERLOCTOR: THE LORD ORDINARY HAVING CONSIDERED THE MINUTES FOR THE PARTIES AND WHOLE PROCESS FINDS THAT THE FUND IN MEDIO THE SUBJECT OF THE PRESENT PROCESS OF MULTIOINTING IS PART OF THE MOVEABLE ESTATE OF THE DECEASED LORD MCLEOD THAT THE PREFERENCE CLAIMED BY MRS MCLEOD OF GEANIES, WIDOW OF THE LATE KENNETH MCKENZIE OF CROMARTIE IS FOUNDED UPON THE SETTLEMENT OF THE DECEASED LORD MCLEOD WHICH PROVIDES THAT HIS PERSONAL FUNDS SHALL IN THE FIRST PLACE BE APPLIED IN

PAYMENT OF HIS DEBTS AND IN PARTICULAR OF THE DEBT DUE TO THE CROWN THAT THE SAID MRS MCLEOD CLAIMING IN RIGHT OF LORD MCLEODS STATEMENT IS NOT ENTITLED TO RECOVER UNDER THAT SETTLEMENT WITHOUT COMPLYING WITH THE CONDITIONS THEREIN CONTAINED THAT THE OTHER COMPETITORS MRS MCKENZIE OF CROMARTIE AND HER HUSBAND ARE ENTITLED TO SEE THAT THE FUND IN CROMARTIE AND HER HUSBAND ARE ENTITLED TO SEE THAT THE FUND IN MEDIO IS APPLIED IN TERMS OF THE SAID SETTLEMENT AND IN EXTINCTION OF DEBTS DUE BY THE SAID LORD MCLEOD AND AS IT IS AVERRED THAT THE DEBT DUE TO THE CROWN MENTIONED IN LORD MCLEODS SETTLEMENT WAS PAID UP BY THE LATE MR KENNETH MCKENZIE FROM FUNDS BELONGING TO THE HEIRS OF ENTAIL OF THE FAMILY OF ROYSTON WHICH HE THEN REPRESENTED AND WHICH CREATES A CLAIM TO THE PRESENT HEIR OF ENTAIL OF THE SAID FAMILY AGAINST THE ESTATE OF CROMARTIE BEFORE FURTHER ANSWER ORDAINS MRS MCKENZIE AND HER HUSBAND TO CALL THE HEIR OF ENTAIL OF THE ESTATE OF ROYSTON AS A PARTY TO THIS PROCESS TO APPEAR FOR HIS INTEREST IN OBEDIENCE TO THE APPOINTMENT IN THIS INTERLOCUTOR THE PETITIONER'S FATHER COLONEL ROBERT MCKENZIE OF ROYSTON WAS CALLED AS A PARTY IN THESE QUESTIONS BEFORE LORD BALMUTO BY A SUMMONS AT THE INSTANCE OF MRS HAY MCKENZIE AND HER HUSBAND. ALL PARTIES WERE NOW IN THE FIELD AND A STATE PERFECTLY SATISFACTORY WAS GIVEN IN OF THE FUND IN LORD FORBE'S HANDS. IT NOW OCCURRED TO THE PARTIES THAT AS THEY HAD OCCASION TO LAY SO MUCH INFORMATION BEFORE LORD BALMUTO ON THE SUBJECT OF THE ROYSTON CLAIMS WHICH HAVE BEEN ALREADY SO FULLY CONSIDERED BY HIS LORDSHIP IN LORD

FORBE'S MULTIPLEPOINDING IT WOULD BE MORE CONVENIENT TO DISCUSS THE ACTION OF CONSTITUTION AT THE MEMORIALIST'S INSTANCE AGAINST MRS HAY MCKENZIE AND HER HUSBAND FOR CONSTITUTING THE WHOLE OF THE ROYSTON RESIDUE A BURDEN ON THE CROMARTY ESTATE BEFORE THE HOUNARABLE JUDGE ALSO. WITH THIS VIEW THEY UNITED IN APPLICATION TO LORD HERMAND TO REMIT THAT PROCESS TO LORD BALMUTO AND AN ORDER TO THIS EFFECT WAS WITHOUT DIFFICULTY OBTAINED. MEMORIALS ON THE WHOLE QUESTIONS BETWEEN THE PARTIES WERE THEN ORDERED BY LORD BALMUTO ON ADVISING OF WHICH HIS LORDSHIP OF THIS DATEW PRONOUNCED THE FOLLOWING INTERLOCTOR: THE LORD ORDINARY HAVING CONSIDERED THE MEMORIALS IN THE THREE CONJOINED PROCESSES AT THE INSTANCE OF COLONEL ROBERT MCKENZIE FINDS THAT THE ESTATE OF CROMARTIE WAS RESTORED TO THE LATE LORD MCLEOD UNDER THE CONDITION OF PAYING THE DEBTS DUE THEREON AND PARTICULARLY A DEBT OF L.19,000 THEN DUE TO THE CROWN AND THAT LORD MCLEOD AFTER PAYING A CONSIDERABLE PART OF THE SAID DEBT EXECUTED AN ENTAIL OF THE SAID ESTATE OF CROMARTY FINDS THAT THE SAID ESTATE OF ROYSTON WAS SOLD UNDER AUTHORITY OF AN ACT OF PARLIAMENT IN 1739 AND IT WAS AFTERWARDS ASCERTAINED BY A DECREE OF THIS COURT IN 1758 THAT THE REVERSION OF THE PRICE OF THAT ESTATE WAS £4813:17:9 AND ONE THIRD AND FELL TO BE LAID OUT IN TERMS OF THE SAID ACT OF PARLIAMENT FOR THE BENEFIT OF THE HEIRS OF ENTAIL CALLED TO THE SUCCESSION OF THE ESTATE OF ROYSTON AND UNDER THE CONDITION OF THAT ENTAIL FINDS THAT LORD MCLEOD WAS AN HEIR OF ENTAIL OF ROYSTON AND APON HIS DEATH HE WAS

SUCCEEDED BY THE LATE KENNETH MCKENZIE WHO TOOK UP THE ESTATE OF CROMARTIE UNDER THE ENTAIL EXECUTED BY LORD MCLEOD AND ALSO ENJOYED DURING HIS LIFE THE INTEREST OF THE DEBT OF £4813:17:9 AND ONE THIRD AS AN HEIR OF ENTAIL OF THE ESTATE OF ROYSTON: FINDS THAT WHILE THE SAID KENNETH MCKENZIE ENJOYED BOTH ESTATES HE OBTAINED A DECREE OF THIS COURT AGAINST SIR JOHN STEWART OF GRANDTULLY BARONET IN WHOSE HANDS THE SUM OF £4813:17:9 AND ONE THIRD WAS ACCORDINGLY PAID INTO EXCHEQUER ON THE 18TH OF SEPTEMBER 1795 AND WHICH WITH A FURTHER SUM PAID BY THE SAID KENNETH MCKENZIE WAS IN FULL OF DEBT DUE TO THE CROWN BUT NO ASSIGNATION IN FAVOUR OF THE ROYSTON HEIRS OF ENTAIL HAS YET BEEN PROCURED: THEREFOR FINDS THAT THE SAID SUM BEING SO PAID IN CONFORMITY TO THE DECREE OF THIS COURT UPON THE SECURITY OF A DEBT AFFECTING THE WHOLE OF THE ESTATE OF CROMARTIE BOTH BY THE TERMS OF THE GRANT FROM THE CROWN RESTORING THE ESTATE AND BEING A DEBT OWING BY THE LATE LORD MCLEOD THE MAKER OF THE ENTAIL AND ALSO BY KENNETH MCKENZIE THE NEXT SUCCEEDING HEIR THE SAID SUM OF £ 4814:17:9 AND ONE THIRD WITH INTEREST THEREOF FROM THE SAID 18TH SEPTEMBER 1795 IN SO FAR AS THE SAID INTEREST IS NOT PAID IS A SUBSISTING AND PREFERABLE DEBT UPON THE ENTAILED LANDS AND ESTATE OF CROMARTIE DUE TO THE PURSUER COLONEL ROBERT MCKENZIE AND THE OTHER HEIRS CALLED TO THE SUCCESSION OF THE ESTATE OF ROYSTON BUT UNDER THE CONDITIONS OF THE ENTAIL OF THAT ESTATE AND OF THE AFORESAID ACT OF PARLIAMENT AND THAT MRS MARIA MCKENZIE THE PRESENT HEIRS OF ENTAIL OF THE ESTATE OF CROMARTIE AND

THE SUBSEQUENT HEIRS OF ENTAIL OF THAT ESTATE ARE LIABLE TO THE PURSUER COLONEL ROBERT MCKENZIE AND OTHER HEIRS OF ENTAIL OF ROYSTON ACCORDING TO THEIR INTEREST FOR PAYMENT OF THE SAID PRINCIPAL SUM AND INTEREST DUE THEREON AND DECERNS ACCORDINGLY WITHOUT PREJUDICE TO THE SAID COLONEL ROBERT MCKENZIE OR OTHER HEIRS OF ENTAIL OF ROYSTON TAKING SUCH STEPS AS MAY BE ADVISED FOR OBTAINING A MORE FORMAL SECURITY OR DECLARATOR OF THEIR RIGHT AND ALSO WITHOUT PREJUDICE TO THE SAID MRS MARIA MCKENZIE OR THE OTHER HEIRS OF ENTAIL OF CROMARTIE OBTAINING SUCH RELEIF FROM THE REPRESENTATIVES OF THE SAID KENNETH MCKENZIE OR OTHERS AS MAY BE COMPETENT. AND IN THE PROCESS OF MULTIPLEPOINDING: FINDS THAT THE SUM OF £1200 IN THE HANDS OF LORD FORBES WITH THE INTEREST DUE THEREON WAS A DEBT DUE BY THE LATE LORD FORBES TO THE LATE LORD MCLEOD AND THAT IT IS STATED AND NOT DENIED THAT BY THE DEEDS OF SETTLEMENT EXECUTED BY LORD MCLEOD IN FAVOUR OF THE SAID KENNETH MCKENZIE HIS LORDSHIP APPOINTED THE WHOLE OF HIS MOVEABLE ESTATE TO BE APPLIED IN PAYMENT OF THE DEBTS OWING BY HIM AND PARTICULARLY IN EXTINCTION OF THE DEBTS OF £4818:16:2 AND ELEVEN TWELVES AFFECTING THE ENTAILED ESTATE BEFORE MENTIONED AND THEREFOR FINDS THAT THE SAID SUM OF £1200 AND INTEREST THEREOF AFTER DEDUCTION OF THE EXPENCES AFTER MENTIONED MUST BE APPLIED IN EXTINCTION PRO TANTO OF THE DEBT DUE UPON THE ESTATE OF CROMARTY TO THE HEIR UNDER THE ROYSTON ENTAIL AND AFTERWARDS LENT OUT AT THE SIGHT OF THIS COURT FOR THE BENEFIT OF THE SAID COLONEL ROBERT MCKENZIE AND OTHER HEIRS OF ENTAIL OF

ROYSTON. AND IN ORDER THAT THE SAME MAY BE PAID AND LENT OUT ACCORDINGLY ORDAINS THE DEFENDER MRS MCKENZIE WIDOW OF THE SAID KENNETH MCKENZIE NOW MRS MCLEOD OF GEANIES WHO IN VIRTUE OF HER FIRST HUSBANDS SETTLEMENT SUCCEEDED TO HIS PERSONAL ESTATE INCLUDING THE SAID SUM OF £1200 TO MAKE UP SUCH TITLE AS MAY BE DEEMED NECESSARY AND THEREAFTER IN CONCURRENCE WITH HER HUSBAND AND WITH CONSENT OF THE SAID MARIA MCKENZIE AND HER HUSBAND TO EXECUTE A VALID DISCHARGE OF THE SAID DEBT OF £1200 AND INTEREST THEREOF IN FAVOUR OF THE HEIRS AND REPRESENTATIVES OF THE LATE LORD FORBES; AND DECERNS AGAINST LORD FORBES THE RAISER OF MULTIPLEPOINDING UPON RECEIVING SUCH DISCHARGE TO MAKE PAYMENT AT THE TERM OF WHITSUNDAY NEXT OF THE SAID SUM OF1200 AND INTEREST THEREOF FROM THE TERM OF——————————————————————————————————

DEDUCTING THE EXPENCE OF RAISING THE MULTIPLEPOINDING OF WHICH APPOINTS AN ACCOUNT TO BE GIVEN IN: APPOINTS THE EXPENCE OF MAKING UP TITLES AND GRANTING SAID DISCHARGE AND OF EXTRACTING THE DECREET TO FOLLOW UPON THE PROCEDINGS TO BE PAID OUT OF THE SUMS TO BE RECEIVED FRO LORD FORBES AND IN CASE NO PROPER SECURITY SHALL BE SANCTIONED BY THE COURT BETWEEN AND THE SAID TERM OF WHITSUNDAY NEXT ORDAINS THE MONEY TO BE PAID BY LORD FORBES AFTER ALLOWING THOSE DEDUCTIONS TO BE LODGED IN THE BANK OF SCOTLAND FOR BEHOOF OF THE HEIRS OF ENTAIL OF ROYSTON UNTIL THE SAME SHALL BE LENT OUT UPON A SECURITY TO BE APPROVED BY THE COURT BUT IN THE MEAN TIME APPOINTS COLONEL ROBERT MCKENZIE TO LODGE IN PROCESS A MINUTE STATING THE SECURITY UPON WHICH IT IS

PROPOSED TO LEND THE SUM TO BE REPORTED TO THE COURT FOR THEIR LORDSHIPS SANCTION AND AUTHORITH: AND LASTLY ORDAINS THE SAID COLONEL ROBERT MCKENZIE SO SOON AS THE SUM DUE BY LORD FORBES SHALL BE CONSIGNED OR PAID TO GRANT A RENUNCIATION OF SO MUCH OF THE DEBT UPON CROMARTIE AS SHALL BE THEREBY EXTINGUISHED AND DECERNS: IN OBEDIENCE TO THIS APPOINTMENT THE LATE COLONEL MCKENZIE FOUND OUT A PROPER SECURITY FOR THE L.1200 THUS TO BE INVESTED AND A MINUTE WAS PREPARED IN HIS NAME STATING THE NATURE OF THE QUESTION BEFORE THE LORD ORDINARY AND THE MANNER IN WHICH HE PROPOSED TO SECURE THE SUM IN MEDIO IN THE PRESENT MULTIPLEPOINDING. THIS MINUTE HAVING BEEN BOXED THE PROCESS WAS ENROLLED IN THE SUMMAR ROLL IN THE MONTH OF MARCH 1809. THE COURT HOWEVER DID NOT THINK IT PROPER AT THAT PERIOD OF THE SESSION TO TAKE THE CASE UNDER CONSIDERATION AND THEREFOR THEY SUPERSEDED JUDGMENT IN THE MINUTE TILL THE FOLLOWING SUMMER SESSION. BEFORE THE QUESTION COULD BE THEN TAKEN UP HOWEVER THE PETITIONER'S FATHER COLONEL ROBERT MCKENZIE DIED; AND THIS NECESSARILY OCCASIONED A CONSIDERABLE INTERRUPTION IN THE PROCEEDINGS THAT WERE PREVIOUSLY IN CONTEMPLATION. IN THEMEAN TIME THE PARTY WHO FORMERLY CONSENTED TO GIVE HERITABLE SECURITY TO THE HEIRS OF ENTAIL FOR THE £1200 IN MEDIO WAS OTHERWISE PROVIDED WITH THE MONEY WHICH HE WANTED AND CONSEQUENTLY THIS PART OF THE ARRANGEMENT FELL TO THE GROUND. SOMETIME AFTERWARDS THE PETITIONER ALEXANDER MCKENZIE NOW OF ROYSTON THE ELDEST SON OF COLONEL MCKENZIE WAS ADVISED TO ENROL THE

CASE IN THE SUMMAR ROLL ANDTO SIST HIMSELF AS A PARTY IN THESE QUESTIONS IN ROOM OF HIS FATHER. THIS WAS ACCORDINGLY DONE OF THIS DATE AND YOUR LORDSHIPS THEREAPON TOOK UP THE MINUTE WHICH HAD BEEN LODGED IN THE PRECEDING YEAR FOR COLONEL ROBERT MCKENZIE. THE OPINION THEN EXPRESSED BY THE COURT WAS THAT THE CASE SHOULD BE REMITTED BACK TO THE LORD ORDINARY PARTLY BECAUSE THE SECURITY FORMERLY OFFERED COULD BE NO LONGER OBTAINED AND PARTLY BECAUSE THE VALIDITY OF ANY NEW SECURITY TO BE OFFERED COULD BE MORE PROPERLY EXAMINED AND ASCERTAINED BY AN INDIVIDUAL JUDGE THAN BY THE COURT COLLECTIVELY WHO HAD IT NOT IN THEIR POWER TO EXAMINE SO MINUTELY A SERIES OF WRITS AND TITLE DEEDS AS THE LORD ORDINARY IN THE OUTER HOUSE THE LORDS THEREFOR OF THIS DATE REMITTED THE CAUSE TO THE LORD ORDINARY TO DO AS HE SHALL SEE CAUSE. IN CONSEQUENCE OF THIS REMIT THE PETITIONER SUBMITTED TO THE LORD ORDINARY ANOTHER SECURITY OF THE MOST UNEXCEPTIONABLE NATURE ON WHICH HE PROPOSED THAT THE MONEY IN QUESTION SHOULD BE SECURED. DANIEL HAMILTON, ESQUIRE OF GILKERSCLEUGH WAS WILLING TO GIVE A HERITABLE SECURITY FOR THE £1200 OVER HIS LANDS OF OVER-WHITECLEUGH LYING IN THE PARISH OF CRAWFORD-JOHN AND SHIRE OF LANARK. THESE LANDS ARE LET ON LEASE TO A GOOD TENANT AT L.238 STERLING PER ANNUM. THE PROGRESS IS CLEAR AND A SEARCH OF THE RECORDS WAS OFFERED SHEWING THAT THERE ARE NO BURDENS OF ANY KIND AFFECTING THE LANDS. AS THE COURT WHEN THIS CASE WAS PREVIOUSLY BEFORE THEM EXPRESSED AN OPINION THAT THE SUFFICIENCY OF ANY SECURITY TO BE OFFERED TOGETHER WITH THE TERMS OF

THE RIGHTS UPON WHICH THE MONEY IS TO BE INVESTED COULD BE MOST CONVENIENTLY ADJUSTED BEFORE THE LORD ORDINARY HIMSELF THE PETITIONER HUMBLY MOVED THE LORD ORDINARY TO APPOINT A DRAFT OF THE PROPOSED SECURITY TO BE FORTHWITH PREPARED BY THE PETITIONERS AGENT AND PUT INTO PROCESS AND IF SUCH A MEASURE WOULD BE MORE SATISFACTORY TO HIS LORDSHIP THAN MAKING THE NECESSARY INVESTIGATION HIMSELF TO REMIT THAT DRAFT ALONG WITH THE TITLE DEEDS OF THE PARTY OFFERING THE SECURITY TO ANY RESPECTABLE WRITER TO THE SIGNET WHOM HIS LORDSHIP MIGHT SUGGEST TO EXAMINE THE PROGRESS AND TO REPORT NOT ONLY ON THE SUFFICIENCY THEREOF BUT ALSO UPON THE VALIDITY OF THE BOND TO BEGRANTED IN SO FAR AS RESPECTS THE RIGHTS AND INTERESTS OF THE HEIRS OF ENTAIL IN THE SUM IN MEDIO. THE PETITIONER HAVING GIVEN IN A MINUTE TO THELORD ORDINARY OFFERING THIS SECURITY HIS LORDSHIP OF THIS DATE APPPOINTED THE SAME TO BE SEEN BY THE PARTIES CONCERNED AND THEM TO SAY WHETHER OR NOT THEY ARE SATISFIED AS TO THE SECURITY PROPOSED FOR LENDING THIS MONEY. THEREAFTER HIS LORDSHIP HAVING HEARD PARTIES PROCURATORS ORDAINS JAMES SUTHERLAND MACKENZIE SECOND SON OF THE DECEASED COLONEL ROBERT MCKENZIE AND BROTHER-GERMAN OF ALEXANDER MCKENZIE THE PETITIONER AND MRS CATHARINE MCKENZIE AND CAPTAIN GEORGE SACKVILLE SUTHERLAND THE TUTORS OF THE SAID JAMES SUTHERLAND MCKENZIE TO STATE IN WRITING BY WAY OF A MINUTE WHETHER OR NOT THEY ARE SATISFIED WITH THE SECURITY PROPOSED FOR LENDING OUT THE MONEY IN QUESTION BETWEEN AND NEXT CALLING. THE TUTORS AND CURATORS ACCORDINGLY FOR THE PETITIONERS BROTHER

ENTERED APPEARANCE AND DECLARED JUDICIALLY BY A MINUTE UNDER THE HAND OF THEIR COUNCIL THEIR ENTIRE APPROBATION OF THE SECURITY ON WHICH THE PETITIONER PROPOSED TO INVEST THIS MONEY. NOTWITHSTANDING THIS THE LORD ORDINARY AGAIN OF THIS DATE ALLOWED ALL CONCERNED TO SEE THE MINUTE OF THETUTORS AND APPOINTED PARTIES TO DEBATE AGAINST THE LORD ORDINARY'S FIRST HOUR IN NOVEMBER NEXT. THE PETITIONER THUS LOST AN OPPORTUNITY OF INVESTING THE MONEY AT THE PROPER RATE OF INTEREST AT LAST MARTINMAS. IMMEDIATELY AFTER THE CHRISTMAS RECESS THEREFOR THE PETITIONER MOVED THE LORD ORDINARY TO MAKE AVIZANDUM WITH THE PROCESS CONTAINING A RENTAL OF THE LANDS OVER WHICH THE SECURITY WAS MEANT TO APPLY A SEARCH OF THE INCUMRANCES AND A SURVEY OR VALUATION OF THE PROPERTY BY MR JOHNSTON THE LAND SURVEYOR. THE LORD ORDINARY ON GOING OVER THESE DOCUMENTS APPOINTED THE CAUSE TO BE CALLED OF THIS DATE AND SUGGESTED A VARIETY OF POINTS ON WHICH HIS LORDSHIP DESIRES SATISFACTION. THE PETITIONER PUT A NOTE INTO PROCESS WHICH HE PRESUMES TO THINK WAS SATISFACTORY TO HIS LORDSHIP ON EVERY POINT BECAUSE THE LORD ORDINARY NEITHER VERBALLY NOR IN WRITING COMMUNICATED ANY FARTHER OBSERVATIONS TO THE PARTIES UPON THE SUFFICIENCY OF THE SECURITY. IT WILL APPEAR HOWEVER FROM THE FOLLOWING DELIVERANCE OF THE LORD ORDINARY ON THE LAST NOTE THAT A NEW DIFFICULTY NOW OCCURRED TO HIS LORDSHIP IN AUTHORISING THE INVESTMENT OF THIS MONEY WHICH HAD NOT BEFORE BEEN SUGGESTED TO THE PARTIES. BEFORE REMITTING THIS CASE TO ANY GENTLEMAN OF RESPECTABILITY AND

EXPERIENCE IN CONVEYANCING TO REPORT UPON THE SECURITY AND FORM OF THE BOND UPON WHICH IT IS PROPOSED TO LEND THE MONEY IN QUESTION AND BEFORE MAKING AVIZANDUM TO THE COURT IT APPEARS NECESSARY TO THE LORD ORDINARY THAT AN EXCERP FROM THE ACT OF PARLIAMENT OR AN EXTRACT COPY OF THE SECTION OF THE ACT WHICH REQUIRES OR AUTHORISES THE COURT TO INTERPOSE THEIR AUTHORITY SHOULD BE PRODUCED; APPOINTS THE PURSUER TO LODGE SUCH EXCERP WITH THE CLERK OF PROCESS, QUAM PRIMUM. THE PETITIONER REPRESENTED TO THE LORD ORDINARY AFTER GIVING DELIVERANCE THAT IT WAS ALTOGETHER A MISTAKE TO SUPPOSE THAT IT WAS UNDER ANY CLAUSE IN ANY ACT OF PARLIAMENT; THAT THE INTERFERENCE OR SANCTION OF THE COURT IN THIS INSTANCE WAS NECESSARY. THIS WAS NOT IMPOSED ON YOUR LORDSHIPS BY ANY CLAUSE IN THEACT AUTHORISING THE ORIGINAL SALE OF ROYSTON; BUT AS BEFORE EXPLAINED IT BECAME THE PROVINCE OF THE COURT ABSOLUTELY FROM THE BREACH OF TRUST BY THE PARLIAMENTARY TRUSTEES TO SEE THIS MONEY PROPERLY AND EFFECTUALLY SECURED FOR BEHOOF OF THE HEIRS OF ENTAIL PARTIES UNDER THE PROTECTION AND JURISDICTION OF YOUR LORDSHIPS WHOSE INTEREST PREVIOUSLY HAD BEEN GROSSLY NEGLECTED AND SACRIFICED. THE PETITIONER ENDEVOURED TO EXPLAIN THIS AS DISTINCTLY AS HE COULD TO THE LORD ORDINARY BUT HIS LORDSHIP OF THIS DATE PRONOUNCED THE FOLLOWING INTERLOCTOR: HAVING CONSIDERED WHAT IS STATED IN THIS MINUTE IN WHICH IT IS ADMITTED THAT NO LEGISLATIVE AUTHORITY EXISTS REQUIRING THE INTERFERENCE OF THE COURT AS TO THE SECURITY TO BE GRANTED FOR THE REVERSION OF THE PRICE OF

THE ESTATE OF ROYSTON SOLD NEARLY A CENTURY AGO THE LORD ORDINARY DOES NOT CONSIDER HIMSELF WARRANTED TO GIVE ANY DIRECTIONS ON THE SUBJECT. SUCH BEING THE OPINION OF THE LORD ORDINARY AFTER EVERY EXPLANATION WHICH IT IS IN THE PETITIONERS POWER TO OFFER THEY MUST NOW HUMBLY SOLICIT YOUR LORDSHIPS TO TAKE THEIR CASE UNDER YOUR CONSIDERATION AND TO RELIEVE THEM AND THE FUND UNDER THEIR CHARGE FROM THE EXTRAORDINARY SITUATION IN WHICH THEY ARE PLACED BY THE LAST INTERLOCTOR OF THE LORD ORDINARY WHICH HAS BEEN JUST LAID BEFORE YOUR LORDSHIPS. IT IS NOW UPWARDS OF TWO YEARS SINCE THE SUM IN MEDIO WAS READY TO BE INVESTED IN TERMS OF THE LORD ORDINARYS ORIGINAL INTERLOCTOR IT IS NOW AND HAS FOR SOME MONTHS BEEN LYING AT MERELY BANK INTREST IN THE BANK OF SCOTLAND. IT IS SIXTEEN MONTHS SINCE FULL AND COMPLETE SECURITY WAS OFFERED FOR THIS MONEY BY WHICH THE PETITIONERS WOULD HAVE DRAWN 5 PER CENT FOR THE SUM SO INVESTED. AND IF THE PETITIONER DURING THE PRESENT MEETING OF THE COURT CANNOT GET THIS TRANSACTION CLOSED THEY MUST SUBMIT TO ALLOW THE MONEY TO REMAIN IN BANK FOR ANOTHER YEAR AT THE DISADVANTAGEOUS RATE OF INTEREST AT PRESENT PAID FOR IT BECAUSE THE MARTINMAS TERM WILL BEOVER ANY APPLICATION CAN BE MADE TO YOUR LORDSHIPS IN THE WINTER SESSION. IN THESE CIRCUMSTANCES THE PETITIONER SUBMITS THAT THEIR CLAIM TO NOTICE AND INTERFERENCE OF THE COURT AT PRESENT IS PECULIARLY URGENT AND WELL FOUNDED. THE LORD ORDINARY'S ONLY DIFFICULTY NOW SEEMS TO BE THAT THE COURT ARE NOT EXPRESSLY REQUIRED BY ANY PARTICULAR CLAUSE IN ANY ACT OF PARLIAMENT

RELATIVE TO THIS MONEY TO SUPERINTEND OR SANCTION THE REINVESTMENT OF IT AND THEREFOR THE LORD ORDINARY OBSERVES THAT HE DOES NOT CONSIDER HIMSELF WARRANTED TO GIVE ANY DIRECTIONSON THE SUBJECT. IN ANSWER TO THIS HOWEVER THE PETITIONER MUST REMARK THAT THERE ARE UNDOUBTEDLY MANY CASES IN WHICH THE COURT INTERFERE EX PROPRIO MOTU TO SEE A PROPER SECURITY GRANTED OR A TRUST DULY FULFILLED WITHOUT ANY LEGISLATIVE AUTHORITY EXPRESSLY REQUIRING YOUR INTERPOSITION. AND IN PARTICULAR THIS IS ONE OF THE VERY CASES IN WHICH THE SUPREME COURT HAS CONSIDERED THAT THEIR AUTHORITY MIGHT BE MOST FITLY AND BENEFICIALLY EXERCISED IN ATTENDING TO THE REINVESTMENT OF THE MONEY. FOR YOUR LORDSHIPS WILL KEEP DISTINCTLY IN VIEW THAT THE SUM IN MEDIO HERE IS ADMITTED ON ALL HANDS TO BELONG TO A SERIES OF HEIRS OF ENTAIL AND TO THEM ALONE. IT IS IN FACT PART OF THE RESIDUE OF THE PRICE OF ROYSTON SOLD IN 1740. NOW IT IS VERY TRUE THAT THIS RESIDUE WAS APPOINTED BY THE ACT OF PARLIAMENT AUTHORISING THE SALE TO BE REINVESTED NOT AT THE SIGHT OF THIS COURT BUT OF CERTAIN TRUSTEES SPECIALLY NAMED FOR THE PURPOSE IN THE ACT. THESE TRUSTEES HOWEVER ARE NOT ONLY DEAD NOW BUT THEY MISAPPLIED THEIR TRUST. HENCE THE INTERPOSITION OF THE SUPREME COURT BECAME NECESSARY IN THIS AS IN EVERY CASE OF VIOLATED TRUST FOR THE BENEFIT AND PROTECTION OF THOSE WHOSE INTEREST HAD SUFFERED IN THE HANDS OF THE TRUSTEES. IT WAS UPON THIS PRINCIPLE ALONE THAT THE HOUSE OFLORDS PROCEEDED IN ORIGINALLY FINDING IT COMPETENT FOR THE HEIR OF ENTAIL IN THIS CASE TO PURSUE LORD ROYSTON'S HEIR FOR ACCOUNTING BEFORE YOUR

LORDSHIPS. AND IT FOLLOWS AS A MATTER OF COARSE THAT THE INSTANT THE COURT PERCEIVED THAT A BREACH OF A TRUST HAD TAKEN PLACE IT BECAME THE DUTY OF YOUR LORDSHIPS TO TAKE SOME PRECAUTIONS AT LEAST TO PREVENT ANY ABUSE IN FUTURE BY SEEING THE MONEY RECOVERED UNDER YOUR AUTHORITY PROPERLY SECURED AND INVESTED FOR BEHOOF OF THE HEIRS OF ENTAIL IN ALL TIME COMING. ACCORDINGLY, THIS WAS CLEARLY THE OPTION OF THE COURT IN 1758 WHEN THEY FOUND LORD ROYSTONS HEIR OF THE LINE LIABLE FOR THE RESIDUE OF THE PRICE THEN ASCERTAINED IN THE ACTION OF SIR KENNETH MCKENZIE'S INSTANCE. THERE WAS NOT THEN ANY MORE THAN AT PRESENT ANY LEGISLATIVE AUTHORITY PARTICULARLY REQUIRING THE INTERFERENCE OF THE COURT BUT STILL YOUR LORDSHIPS PREDECESSORS OF THAT DAY HAD NO HESITATION IN ORDAINING THE MONEY TO BE LAID OUT AT THE SIGHT AND BY THE APPROBATION OF THE COURT. ANDIT IS PERFECTLY PLAIN THAT THE SAME REASON AND THE SAME CIRCUMSTANCES STILL EXIST FOR SANCTIONING THIS INTERPOSITION. IT IS NO DOUBT TRUE THAT THE MONEY IN POINT OF FACT WAS NOT AFTERWARDS SECURED AT THE SIGHT OF THE COURTS IN 1758. THIS AROSE ENTIRELY FROM THE IMMEDIATE DEATH OF SIR KENNETH MACKENZIE AND THE SUBSEQUENT ATTAINDER OF LORD CROMARTIE IN CONSEQUENCE OF WHICH THIS FUND CAME TO BE OVERLOOKED. BUT THESE CIRCUMSTANCES DO NOT IMPAIR THE WEIGHT OF THE PRECEDENT IN 1758 WHICH SHEWS THAT THE COURT THEN THOUGHT IT THERE DUTY TO SUPERINTEND THE REINVESTMENT OF THE MONEY FOR BEHOOF OF THE HEIRS OF ENTAIL. AFTERWARDS IN 1795 WHEN YOUR LORDSHIPS AGAIN HAD THE STATE OF THIS FUND UNDER YOUR CONSIDERATION YOU

THEN FOUND AND DECLARED IT TO BELONG TO THE ORIGINAL HEIRS OF ENTAIL IN THE ESTATE OF ROYSTON AND YOU SPECIALLY APPOINTED MR KENNETH MCKENZIE THEN OF CROMARTIE TO INVEST AND SECURE THE MONEY IN THE SAME NAME OF THE SAME SERIES OF HEIRS AS THOSE CONTAINED IN THE ORIGINAL TAILZIE OF ROYSTON. THIS HOWEVER WAS NOT DONE FROM THE CAUSES BEFORE EXPLAINED. HERE THEREFORE IS ANOTHER INSTANCE OF VIOLATED TRUST WHICH CALLS APON THE COURT TO ASSUME A JURISDICTION FOR THE BENEFIT OF THE HEIRS OF ENTAIL. SO THAT WHEN THE COURT IS ASKED AT PRESENT MERELY TO LEND THEIR SANCTION TO THE REINVESTMENT OF THE MONEY IT IS MERELY CRAVING THAT YOUR LORDSHIPS WILL FOLLOW UP THE DECREES OF YOUR PREDECESSORS FOR SECURING PERMANENTLY THE ENTAILED PROPERTY IN WHICH ALL THE HEIRS OF ROYSTON HAVE A CONTINGENT INTEREST. ACCORDINGLY, YOUR LORDSHIPS WILL OBSERVE THAT THE LORD ORDINARY HIMSELF IN THE VERY FULL AND ARTICULATE INTERLOCTOR WHICH HE PRONOUNCED IN AN EARLY STAGE OF THIS CAUSE SPECIFICALLY FOUND THAT THE SAID SUM OF L.1200 AND INTEREST THEREOF AFTER DEDUCTIONS OF THE EXPENSES MUST BE APPLIED IN EXTINCTION PRO TANTO OF THE DEBT DUE UPON THE ESTATE OF CROMARTIE TO THE HEIR UNDER THE ROYSTON ENTAIL AND AFTERWARDS LENT OUT AT THE SIGHT OF THIS COURT FOR THE BENEFIT OF THE SAID COLONEL ROBERT MCKENZIE AND OTHER HEIRS OF ENTAIL OF ROYSTON HERE IS A FINAL INTERLOCTOR IN THIS VERY PROCESS PARTICULARY DECLARING THE MODE IN WHICH THE SUM IN MEDIO IS TO BE DISPOSED OF. AND YET AFTER ALL THE PETITIONERS ARE TOLD IN THE LAST INTERLOCTOR THAT THE LORD ORDINARY DOES

NOT CONSIDER HIMSELF WARRANTED TO GIVE ANY DIRECTIONS ON THE SUBJECT. THE PETITIONERS HUMBLY SUBMIT THAT THE AUTHORITY OF THE COURT IN THIS CASE IS IN PECULIAR MANNER WARRANTED BOTH BY THE PREVIOUS PROCEEDINGS OF THE COURT ITSELF IN RELATION TO THIS FUND AND BY THE EARLY INTERLOCTORS OF THE LORD ORDINARY IN THIS CAUSE WHICH PROCEEDED ON A VIEW OF THE CASE IN EVERY RESPECT SOUND AND UNEXCEPTIONABLE. IN THE LAST INTERLOCTOR OF THE LORD ORDINARY THE LENGTH OF TIME THAT ELAPSED SINCE THE SALE OF ROYSTON SEEMS TO BE ALLUDED TO A CIRCUMSTANCE WHICH OUGHT TO DISPENSE WITH THE INTERFERENCE OF THE COURT ON THE PRESENT OCCASION; FOR THE LORD ORDINARY MENTIONS THAT THE ESTATE OF ROYSTON WAS SOLD NEAR A CENTURY AGO. IT IS NO DOUBT 70 YEARS SINCE THE ESTATE OF ROYSTON WAS SOLD BUT REALLY THE PETITIONERS ARE NOT AWARE WHAT EFFECT THIS CIRCUMSTANCE EITHER CAN OR OUGHT TO HAVE IN MINDS OF YOUR LORDSHIPS IN AUTHORIZING A REINVESTMENT OF THE RESIDUE OF THE PRICE AT THE SIGHT OF THE COURT. ALTHOUGH THE SALE HAD TAKEN PLACE TWO CENTURIES AGO THE PRICE OR AT LEAST THE RESIDUE OF IT, IS STILL SAFE AND UNDER THE JURISDICTION OF YOUR LORDSHIPS. BESIDES EVEN SINCE THE SALE OF ROYSTON THERE HAVE BEEN TWO DECREES OF THIS COURT ONE IN 1758 AND ANOTHER IN 1795 SPECIALLY RECOGNIZING THE RIGHT OF THE HEIRS OF ENTAIL OF ROYSTON TO THERESIDUE OF THE PRICE WHICH MAY BE ALL RECOVERED STILL. SO THAT IT APPEARS OF NO CONSEQUENCE AT ALL HERE TO OBSERVE THAT IT IS NEAR A CENTURY SINCE THE ESTATE OF ROYSTON WAS SOLD. THE PETITIONERS ARE HUMBLY PERSUADED THEREFORE WHEN THERE

CASE IS PROPERLY UNDERSTOOD THAT THEIR PRESENT APPLICATION MUST APPEAR TO YOUR LORDSHIPS TO BE UNDENIABLY COMPETENT. AND IF IT BE COMPETENT THE PETITIONERS ARE SURE THAT IT MUST MOREOVER APPEAR TO YOUR LORDSHIPS TO BE ONE OF THE MOST PROPER AND REASONABLE APPLICATIONS IN ITSELF EVER SUBMITTED TO THE COURT BY ANY PARTY. IT IS ENTIRELY A MEASURE OF PRECAUTION AND SECURITY ADOPTED BY THE PETITIONERS. THEY CANNOT POSSIBLY HAVE A SINISTER OBJECT IN IT. THE PETITIONERS ARE PREFERED TO THE WHOLE WORLD BY FINAL INTERLOCTORS TO THE SUM TO BE INVESTED. NO OTHER PARTY CAN EVER CLAIM RIGHT TO IT. WERE THE PETITIONER OR HIS TUTORS TO CONSULT HIS OWN INTEREST PERSONALLY THEY MIGHT PERHAPS BE PLEASED TO GRT THE THIS MONEY IN FEE SIMPLE TO TAKE IT WITHOUT ANY RESTRICTIONS. BUT THE PETITIONERS DO NOT ASK THIS. THEY MERELY CRAVE THAT YOUR LORDSHIPS WILL FOR PROTECTION OF THE HEIRS OF ENTAIL AUTHORIZE IT TO BEINVESTED ON SUCH SECURITY AS ON ENQUIRY MAY APPEAR TO BE SAFE. THIS IS ALL THAT THE PETITIONERS MOVED THE LORD ORDINARY FOR IN THIS CASE. HIS LORDSHIP HOWEVER DID NOT FEEL HIMSELF WARRANTED TO PROCEED BECAUSE THERE WAS NO EXPRESS LEGISLATIVE AUTHORITY DIRECTING THE INTERFERENCE OF THIS COURT. BUT THE PETITIONERS HUMBLY TRUST THEY HAVE NOW SATISFIED YOUR LORDSHIPS THAT THIS COURT IS IN MANY CASES ENTITLED AND CALLED APON TO TAKE PROPER MEASURES FOR PRESERVING SUCH A FUND AS THE PRESENT; AND SURELY THE APPLICATION WHICH THE PETITIONERS NOW MAKE IS WELL CALCULATED TO PROTECT THE INTEREST OF ALL CONCERNED WITHOUT BRINGING THE INTEREST OF ONE EVEN INTO HAZARD. WITH

RESPECT TO THE SECURITY WHICH THE PETITIONERS HAVE OFFERED FOR THE MONEY IT IS UNNECESSARY TO ENTER INTO THE DISCUSSION OF THAT HERE AS THE LORD ORDINARY DOES NOT GROUND HIS INTERLOCTOR REFUSING TO INTERFERE ON ANY OBJECTIONS TO SUCH SECURITY. THE PETITIONERS SHALL ONLY ADD THEREFORE THAT IF THERE BE A SINGLE OBJECTION TO THE SECURITY THEY ARE CONFIDENT THEY WILL BE ABLE TO EXPLAIN IT WHENEVER IT IS DISTINCTLY STATED. THEY SURELY HAVE GOOD INTEREST NOT TO LEND THIS MONEY ON INSUFFICIENT SECURITY. BUT THE PETITIONERS WILL GO FURTHER AND THEY WILL SUBMIT THE SECURITY WHICH THEY PROPOSE TO TAKE, TO THE INVESTIGATION OF THE MOST RESPECTABLE AND EXPERIENCED MEN OF BUSINESS IN EDINBURGH FROM WHOM YOUR LORDSHIPS MAY WISH TO HAVE A REPORT ON THE SUBJECT; AND THE PETITIONERS WILL LEAVE IT TO THEM TO SAY IF THE SECURITY OFFERED BE NOT IN EVERY RESPECT AS AMPLE AS IT IS EITHER NECESSARY OFFERED BE NOT IN EVERY RESPECT AS AMPLE AS IT IS EITHER NECESSARY OR CUSTOMARY TO ASK FOR SUCH A LOAN.

MAY IT THEREFORE PLEASE YOUR LORDSHIPS TO TAKE THE PREMISES INTO CONSIDERATION AND TO FIND THAT THE £1200 FOUND BY INTERLOCTORS LONG SINCE FINAL IN THIS CAUSE TO BELONG TO THE PETITIONERS AND OTHER HEIRS OF ROYSTON OUGHT TO BE LENT OUT OR INVESTED FOR BEHOOF OF THE HEIRS AT THE SIGHT OF THIS COURT AND IN ORDER TO CARRY THIS FINDING INTO EFFECT TO REMIT TO ANY TWO OR MORE EXPERIENCED CONVEYANCERS TO INVESTIGATE THE SECURITY OFFERED BY THE PETITIONERS AND TO FRAME THE NECESSARY DEEDS FORSECURING THE MONEY AND REPORT OR TO AFFORD THE PETITIONERS SUCH OTHER

RELIEF IN THE PREMISES AS TO YOUR LORDSHIPS MAY SEEM PROPER.

ACCORDING TO JUSTICE, &c. JOHN CLERK.