

Testament of Henry Cockburn
SC70/4/34 pp.906-7

[p.907] [In margin] Hon[our]able H. Cockburn Vide Record of Juris Vol 84 p 172 15 Aug[us]t 1854 [Main text] It is Contracted Agreed and matrimonially Ended betwixt the parties following vi[delicet] Henry Cockburn Esquire Advocate, on the one part and Miss Elizabeth Macdowall Eldest Daughter of the deceased James Macdowall Esquire sometime Merchant in Glasgow on the other part in manner following, That is to say, the said parties have accepted and do hereby accept of each other, for lawful Spouses, and they Promise to solemnize the Bond of Marriage with all convenient speed [p.909] speed, agreeably to the rules of the Church In Contemplation of which Marriage the said Henry Cockburn Hereby becomes bound to Provide such a sum of money as with the sums Assigned over to him, by the said Elizabeth Macdowall in manner after mentioned, will make up the total sum of Two thousand pounds Sterling which sum of Two Thousand ponds Sterling the said Henry Cockburn Binds and Obliges himself his heirs Executors and Successors whomsoever betwixt and the term of Martinmas next to lay out Invest and secure upon good and undoubted Security either Heritable or moveable and to take the Rights and Securities thereof to Himself and his said promised Spouse in Conjunct fee and liferent for her the said Elizabeth Macdowalls liferent use allenary after his death in case she shall happen to survive Him and to the children one or more to be procreated betwixt them in Fee Fee and that equally among the said Children or according to such proportions and divisions as the said Henry Cockburn shall hereafter fix and appoint and failing of the said children to the said Henry Cockburns own nearest heirs and Assignees whatsoever in fee and as often as the said sum or any part thereof shall be uplifted the the Said Henry Cockburn Binds and obliges Himself and his foresiads to settle and lease the same again in the Terms above expressed And further with regard to what may be conquest and acquired by the said Henry Cockburn during the subsistence of this present marriage he the said Henry Cockburn also Binds and Obliges Himself and his foresaids out of the said Conquest to secure the said Elizabeth Macdowall and to content and pay to her in case she shall happen to survive him during all the days of her life after his decease and to her assignees a free liferent annuity of [p.911] of Three hundred pounds sterling over and above the foresaid liferent of the said Capital sum of Two thousand pounds sterling provided to the said Elizabeth Macdowall as before expressed and that at two terms in the year Whitsunday and martinmas by equal portions beginning the first terms payment of the said annuity of Three hundred pounds Sterling at the First term of Whitsunday or Martinmas next after the decease of the said Henry Cockburn, for the half year preceding and so forth half yearly thereafter during the lifetime of the said Elizabeth Macdowall with a fifth part more of each terms payment in case of failure and annual rent thereof from and after each respective term of payment during the not payment of the same as Also the said Henry Cockburn Binds and Obliges himself and his Foresaids to make payment to the Said Elizabeth Macdowall out of the Conquest Conquest of the said Marriage in the event of her surviving him, the sum of one Thousand pounds sterling for Household furniture and that at the First term of Whitsunday or Martinmas Immediately following his death with a fifth part more thereof of liquidate Penalty in case of failure and Annual rent from and after the said Term of payment of the same which Provisions above written the said Elizabeth Macdowall hereby accepts of in full Contentation and satisfaction to her, of all Terce of Lauds half or third of moveables or others whatsoever that she

can any ways ask claim or demand or have Right to, by and through the decease of the said Henry Cockburn her affidate Husband in case she shall survive Him, or which her Executors or next of Kin can claim, in case she shall Predecease him (the said Henry Cockburn his good will only accepted) In any manner of way, And declaring that [p.913] that the said Elizabeth Macdowals Legal claims for suitable mournings and for the Aliment of her husbands family till the first term after his decease with her own Paraphernalia are as ways hereby understood to be comprehended under the foresaid acceptance or Discharge but are expressly reserved as accords And in further Contemplation of the said Marriage the said Henry Cockburn hereby Settles Provides and Secures out of the conquest of the same and Binds and Obliges him and his foresaids to content and pay to the Child or children whether male of female to be procreated of the present Marriage over and above the aforesaid capital sum provided in fee to the children as above expressed the further provisions or sums of money following Vizt the sum of Two Thousand pounds Sterling to one child, the sum of three Thousand pounds str to two and the sum of Five thousand pounds sterling to three or more children to be divided in in such proportions as the said Henry Cockburn shall think proper, and Failing thereof to fall equally among the said children and that at the First term of Whitsunday or Martinmas which shall happen at the period of Six months after the decease of the longest liver of the said Henry Cockburn and Elizabeth Macdowall With a fifth part more of said Sums of five thousand pounds Three Thousand pounds or Five thousand Pounds respectively of liquidate penalty in case of failure and the due and Ordinary Annual rent thereof from and after the said term of payment and yearly termly and continually thereafter during the not payment of the same And Moreover the Said Henry Cockburn Binds and Obliges him and his foresaids to aliment Clothe and Educate the said child or children to be procreated of this Present marriage, according to their Stations during the subsistence of the [p.915] the marriage, and also until the foresaid provisions hereby conceived in their favour shall become payable and their favor shall become payable and bear annual rent Which Provisions in favor of the Children to be procreated of this marriage are hereby Declared to be in full Contentation and satisfaction to them of all Legitim patrin natural Bairns Part of gear, share of moveables Executry, or others whatsoever which they can any was ask claim or demand from him the said Henry Cockburn their father in any manner of way, his own good will only Excepted, And farther as by the Conception of this present Contract the whole property is settled to belong to the said Henry Cockburn in the event of his surviving the said Elizabeth Macdowall and there being no children procreated of the said Marriage, so on the other hand, It is Hereby provided and Declared that the Said Elizabeth Macdowall in the Event Event of her surviving the said Henry Cockburn And there being no Children of the said Marriage shall become entitled and Have right over and above the aforesaid Provisions conceived in her favor to One third share of the Residue of Free funds and effects left by the Said Henry Cockburn at his death, For which causes and on the other Part in consideration of the said Marriage and of the above written Provisions the said Elizabeth Macdowal Has Assigned and Made over As she Hereby Assigns Conveys and makes over to and in favor of the said Henry Cockburn his heirs Executors or Assignees all and sundry Debts and Sums of money Donations Legacies Goods gear and Effects of whatsoever nature or denomination presently addebted resting and owing to her or which she may afterwards succeed to, or acquire, during the subsistence of the Marriage with the whole Vouchers Instructions and Conveyances thereof And [p.917] And all following or competent to

Follow upon the same forever surrogating and Substituting the said Henry Cockburn and his foresaids in her the said Elizabeth Macdowalls full right and place of the the premises with full power To him and them to do every thing thereanent which she could have done herself before granting hereof And sicklike It is hereby Declared That although it should happen this Present marriage to dissolve within Year and day after the solemnization Thereof, without a living child procreated of the same, yet not withstanding such event, these presents and the provisions and stipulations herein contained in favor of either of the parties contractors shall continue and subsist in force and effect to all intents and purposes any law or custom to the contrary notwithstanding And Lastly the said Henry Cockburn hereby consents and and agrees that all execution shall and may pass and be directed hereupon at the instance of William Macdowall Esquire Comptroller of the Customs at Greenock, The Honourable George Fergusson of Hermand one of the Senators of the College of Justice David McDowall Grant Esquire of Arndilly and lieutenant colonel Lawrence McDowell of the Renfrewshire Regiment of Militia, or the Major part of them, and the survivors or survivor of them, for implementing and performance of the obligation Stipulations and Provisions before written Hereby conceived in favor of the Said Elizabeth Macdowall and the

Child or children to be procreated of This (Elziabeth Macdowall and the child or children to be procreated of this) Present marriage respectively And for more security the said Parties Consent to the Registration hereof in the Books of Council and Session or Any other Judges Books competent therein to remain for Preservation and if needful that all Execution

Necessary [p.919] Necessary may pass on a Decree to be Interponed hereto in ? as effeirs And for that purpose they Constitute Their Pro[curato]rs & c[etera] In witness whereof they Subscribe these presents consisting of this and the three preceding pages written on Stamped paper by Archibald Wishart Clerk to Robert Dundas Writer to the Signet with a supplicate Hereof also written by the said Archibald Wishart At Edinburgh the sixteenth Day of March One Thousand eight Hundred and eleven years before these Witnesses the said Honourable George Fergusson Lord Hermond Day Rot McDowall Esquire Merchant, and John Cockburn Merchant in Leith (s[i]g[ne]d) Henry Cockburn Elizabeth McDowall, John Cockburn Witness D.H. McDowall Witness; Geo Fergusson Witness At Edinburgh the twelfth day of May in the year one thousand eight Hundred and fifty four In presence

Of the Lords of Council and Session Compared Compeared George Monro Esquire Advocate Procurator for the Honourable Henry Cockburn after named and Designed and gave in the Trust Disposition and Settlement and Division and Directions underwritten Desiring the same might be registered In their Lordships Books conform to Law which desire the said Lords found reasonable and ordained The same to be done accordingly whereof the tenor follows I the Honourable Henry Cockburn one of the Senators of the College of Justice For the better Settlement of my Affairs in the event of my death Agreeably to the instructions given or to be given by me in relation thereto Do hereby Give Grant Assign and dispone to Mrs Elizabeth McDowall or Cockburn My wife, Thomas Maitland of Dundrennan Esquire Advocate and Archibald Davidson Esquire Advocate, and to any other Person [p.921] Person or persons whom I shall Hereafter appoint by a writing under my hand or who shall Be assumed in virtue of the Power herein after written as Trustees for executing the Trust Hereby erated and the survivors or survivor of the said Trustees Named or to be named by me or to be assumed as said is, And who shall accept hereof, Any two of them being a quorum, And any other of them having Efficient power to act if one of them only

shall accept and Survive and to the assignees of the said Trustees But in Trust For the uses ends and purposes with the power (with the powers) and under the condition provisions and reservations after written all and sundry Land houses annual rents Tacks and other heritages at present belonging or which shall belong to me at the time time of my death and particularly without prejudice to the said generality All and whole the Lands and other heritages following Vizt in the first place all and whole the equal half of that Lot or area of ground with the dwelling house and cellars lately built thereon situated on the west side of Charlotte Square Edinburgh marked number Twenty three and measuring fifty & nine feet in front being the northmost Lot originally feued by the Lord Provost Magistrates and Council as representing the community of the City of Edinburgh to James Bryce Painter in Edinburgh and bounded as follows viz on the north by the centre of a mutual gavel and wall between said lot and the House belonging to Sir William Fettes Baronet, on the South by the centre of a mutual gavel and wall dividing the South by the centre of a mutual gavel and [p.923] and wall dividing the South half of said lot or area of ground, now the property of Lord Pitmilly, from the northmost half of the same above described on the west by a Mews Lane twenty feet wide, And on the East by Charlotte Square Together with the right in common along with the other proprietors of Houses in Charlotte Square Together With the right in common along with the other proprietors of Houses in Charlotte Square to the whole space of ground or area of the Square within the line of the Street ways now enclosed and railed in by a parapet wall and iron railing and whole other parts privileges and Pertinents of the foresaid subjects But always under the burdens and Stipulations specially expressed and Contained in a feu Charter of the said Subjects granted by the Lord Provost Magistrates and Council of the City of Edinburgh with Consent of the said James Bryce in favour of Thomas Burnett of Park dated the thirty First day of March and ninth day of of April one thousand eight hundred and thirteen And in the second place All and whole those portions of Arable and Hill ground parts of the Lands and Estate of Bonally measuring twenty one acres and twenty five falls or thereby Scotch measure or twenty six acres two roods and twenty nine poles Imperial measure or thereby as contained and described in the Feu Charter after mentioned, which portions of ground are delineated upon a Feuing Plan belonging to the Governors of James Gilliespies Hospital and free School Made out by Thomas Grainger Land Surveyor in Edinburgh subscribed by Alexander Craig Esquire Merchant in Edinburgh Pro[curator]s of the said Governors And me the said Henry Cockburn As relative to the Feu charter of the said portions of Ground made and granted by the said Alexander Craig as Pro[curator]s and as authorised

By the said Governors in my favor Dated [p.925] Dated the twenty sixth day of January one thousand eight hundred and twenty nine and are bounded Partly by the remaining Hill Ground belonging to the said Hospital and partly by the road leading from the old village of Bonally to the Hill on the West, By the road leading past the said Old village towards the said Hill Road on the North; By the ground belonging to the said Hospital on the East and by the Hill Grounds belonging to the said Hospital along a carved line running from a point on the South East towards another point on the South west, on the South parts; all as presently enclosed by me, with the dwelling house and whole other buildings presently erected on the said Grounds, together with the Teinds Parsonage and vicarage within the Barony of Woodhall Parish of Colinton Alias Hailes and Shire of Edinburgh Which Which grounds having been inclosed By me along the several Boundaries before mentioned the said Fences on these boundaries are by the foresaid Feu Charter declared to be my

property and not to be mutual or common to the said Hospital or any other Person, and it was also thereby declared that as the Dyke or Fence fanning the Eastern Boundary of the arable Grounds thereby Feued had been erected by me four feet within the Property thereby disposed to me on that quarter, the said arable ground part of the Prospect thereby disposed extends four feet to the East of the said Eastern Fence and It was farther by the said Feu Charter expressly provided and declared that I and my heirs and assignees should be entitled to use the foresaid road leading from the old Village of Bonally to the Hill on the West, of the property thereby disposed so far as the said road runs [p.927] runs along the said Feu And also All and Whole a Small triangular space of Ground at the north west corner of the said above described parts of the said Lands and Estate of Bonally containing twenty one falls and fifty three one Hundred and twenty fifth parts of a fall Scotch Measure as contained and described in a mutual agreement between me and the said Governors of Gillespie's Hospital dated twenty third august and Twentieth September Eighteen Hundred and thirty seven Together with all right title and interest Claim of right property and possession Which I my Authors or predecessors or heirs and Successors had have or any ways may have claim or pretend to the said Lands and other heritages in any manner of way As also All and sundry debts and sums of money heritable and moveable Presently addebted and owing to me or which shall be owing to me at at the time of my death by Bond Bill promissory Note Account Decreet Policy or Insurance or any other manner and all stock in the Public Funds or in any Public or Private Company together with the whole writs and evidents of my Heritable Estate and the whole Vouchers and instructions of the said Debts and diligence and Execution that shall have been used for the same And also all my Household Furniture Plate Books Prints Pictures Papers manuscripts Watches Jewels lying money and whole other moveable goods gear chattels and Effects of whatever kind and Denomination now belonging or which shall belong to me at my death Dispensing with the generality hereof and declaring that any Inventory or List of my said debts means And effects to be subscribed by me as relative hereto at any time of my life shall be held as part [p.929] part of this deed and shall exclude the necessity of Confirmation But in Trust to the ends uses and purposes after specified vizt To the end in the first place that the debts & Sums of money due to me and My whole other moveable Estate and Effects mat be uplifted by my Said Trustees and that the foresaid House and area in Charlotte Square and other Lands and heritages now belonging or which shall belong to me at my death may be Sold agreeably to the directions to be hereafter given by me by any Writing under my hand or Without any further directions if none shall be given by me and shall be applied in the First place In payment of my Deathbed and funeral Expenses and of the Expense of managing and Executing this Trust Secondly for payment of all the just and Lawfull debts which shall be owing by me at my death Thirdly for payment of all provisions to my wife and children and all other obligations legacies donations or other bequests whatsoever granted or to be granted by me to any person or persons by Contract Bond Memorandum Codicil or other writing whatsoever executed or to be executed by me at any time of my life and even on deathbed with the formality of which deeds or writings I hereby dispense and in the last place my said Trustees shall make over and Convey the residue and remainder of my said Estate and Effects after payment of my said debts Legacies and Obligations, or shall convey or dispone such of my heritable Estate as shall not be sold to and in favor of such person or persons, or shall apply and employ the same to such uses, ends and purposes as I shall direct and appoint by any Writing under my hand of the date hereof or any other date of

dates or even [p.931] even upon deathbed, And failing such appointment to and in favor of my Widow and my daughters who shall never have been married equally among them or to the survivor of these persons but in Liferent for their or her liferent use allenary, and upon the death or marriage of the survivor of them to and in favour of my whole children or their issue alive at the period of distribution (the issue of any child predeceasing being entitled to the share of the deceased parent) equally among them in fee but excluding any child or the issue of any child who may have renounced his or her interest in my succession, whom all failing to my own nearest Heirs and Assignees whomsoever And with the powers after written vizt with the Power to my said Trustees and their quorum foresaid to uplift sue for convey renounce renounce and discharge the foresaid Debts or sums of money heritable or Moveable and to sell and dispone My said House in Charlotte Square with the area and pertinents and other lands and heritages, by Public Roup or private bargain as they shall think fit, and also to compound transact and Agree all debts claims and demands which any person or persons may have against Me or which I may have against others, And if necessary to submit and refer All disputes and differences respecting the same or otherwise arising in the Execution of this Trust to any Person or persons as arbiters or Oversmen and to cause implement the awards to be given by them as also to appoint either one of Themselves or any other person to be Factor and Cashier for the Purpose of uplifting and recovering the Trust funds with power also to my said Trustees or any of [p.933] of them at any time to resign the Office of trustee and in the Event of the death or resignation of any of my Said Trustees or of any of them Declining or becoming incapable of Acting, with power to the accepting and acting Trustee, or to the survivor of them, to assume in the room of such Trustees so resigning, or failing any person or persons they or the Survivor shall think proper and Which Trustees shall have the same powers authorities and privileges as the trustees hereby named But with and under the conditions Afterwritten as it is hereby expressly Conditioned and Provided that my Said Trustees shall be holden and Obliged to apply the subjects hereby Disponed and the produce and prices thereof for the uses and Purposes before mentioned As also that the purchases of the said house & Area in Charlotte Square and other lands and heritages hereby Disponed Disponed and the debtors in the Debts or sums of money due to Me shall nowise be concerned with the application of the said prices debts or sums or with any of the conditions and provisions herein contained nor be anyways bound to notice whether the said price sums or debts be applied or not towards the uses and purposes beforementioned But they shall be sufficiently exonerated and secured by the dispositions Conveyances or discharges to be Granted to them by my said Trustees or their quorum or factor Foresaid And I hereby declare that My said Trustees shall noways be liable for omissions or suiguli in Solidum but only each of them for himself and his own personal Intromissions under which conditions Provisions and declarations these presents are Granted and shall be accepted by my Said Trustees and no otherways And in which House and area in Charlotte Square with the Pertinents [p.935] Pertinents and other Lands and Heritages before disponed I Bind and Oblige Myself and my heirs and Successors whomsoever to Infett and Leize my said Trustees and their forsaid To be Holden either from me of and under My immediate lawfull superiors thereof In like manner and as freely in all respects as I hold the same Myself or of and under me and my Foresaid in free bleuch for payment of a penny Scots money at the Term of Whitsunday yearly in Name of bleuch farm if asked only and freeing and relieving as of the duties and

services payable to out superiors of the same and They either by resignation or confirmation or both the one without prejudice of the other And for accomplishing the said Infetment by Resignation I hereby Constitute and appoint and each of them jointly & severally my lawful and irrecoverable Procurators Procurators for me and in my name And behalf duly and lawfully to Resign and surrender the foresaid House and Area in Charlotte Square and other Lands and heritages (heritages) with the pertinents before described & here held as repeated breviaits causa in the hands of my Immediate Lawfull superiors of the same or of their Commissioners in their names having power to receive resignations and thereupon to grant new Infetments In favor and for new Infetment thereof to be granted to the said Mrs Elizabeth McDowall or Cockburn Thomas Maitland and Archibald Davidson and any other person or persons to be Hereafter named by me or assumed in manner before written as Trustees Foresaid and the survivors or Survivors acceptors or acceptor of them and their disponees But always for the uses ends and purposes with the powers and under the Conditions and provisions before written [p.937] written and to do and cause to be done all and every thing which to the Office of Prosecutor in such uses belongs Ratifying hereby and Holding firm and all and whatever my said Procurators shall lawfully do or cause to be done in virtue hereof And further I hereby Assign and Dispone to my said Trustees and their foresaids not only the rents maills and duties of the foresaid House and Area in Charlotte Square and of The whole lands and other heritages Hereby conveyed due or that shall become due at my decease or

Thereafter But also the sole writs and evidents of and concerning the same with the whole clauses & Obligements therein contained and all that has followed or is competent to follow thereupon and particularly without prejudice to the said generality the foresaid Feu Charter of the said portions of the Lands Lands and Estate of Bonally in My favor and precept of Sasine Therein contained which is at present unexecuted (which is at Present unexecuted) to the end that if Infetment be not taken in My favor during my lifetime My said Trustees and their foresaids may obtain themselves Infet and Leised in the said portions of the said Lands and Estate of Bonally And for rendering the foresaid Conveyance of my said moveable and personal Estate and Effects more complete I hereby

Nominate and Appoint the said Mrs Elizabeth McDowall or Cockburn Thomas Maitland and Archibald Davidson and any other person or Persons to be hereafter appointed by me or to be assumed in Manner aforesaid and the survivors or survivor and acceptors or acceptor of them To be my sole and only Executor administrator and Universal [p.939] Universal intromitters with my whole moveable goods gear debts sums of money and whole other personal Estate and Effects belonging or owing to me at my death with full power to them to administer confirm or give up in Inventory the same and to do every thing competent to Executors and I reserve not only My own liferent of the subjects Hereby disponed but also full power to myself at any time of my life and even on deathbed to revoke or alter these presents in whole or in part and to sell burden or otherwise dispose of the whole Estate heritable or moveable real or personal hereby conveyed or any part thereof and I Hereby dispense with the delivery hereof declaring the same to be effectual through found in my Repositories or in the custody of any other person at my death And I consent to the Registration Hereof Hereof in the Books of Council and Session or of any other proper Court therein to remain for preservation and Constitute George Monro Esquire Advocate my Procurator for That purpose; And farther I as being Feudally

infert and Leised in the said House and area in Charlotte Square hereby desire and require you And Each of you as my Bailies Hereby jointly and severally and Specially constituted to the effect afterwritten That on sight hereof yo[u] pass to the ground of the said House and area, and in the event that ifertment shall have been taken in my favor in the foresaid portions of the lands and Estate of Bonally during my life then as now and now as then I also Desire and Require you my said Bailies that on sight hereof yo[u] Pass to the ground of the foresaid Portions of the said Lands and Estate [p.941] Estate of Bonally; and there Give and Deliver heritable State of Sasine Real actual and corporal possession to the said Mrs Elizabeth McDowall or Cockburn Thomas Maitland and Archibald Davidson and any other Person or persons to be hereafter named by me or assumed in manner before written as Trustees Foresaid and the survivors or survivor or acceptors or acceptor of them and their disponees of all and Whole The foresaid House and area in Charlotte Square with the

Pertinents and of the foresaid portions of the Lands and Estate of Bonally with the Dwelling house and other Buildings and teinds and pertinents thereof all before described and here

Held as repeated brevitatis causa But In trust always for the uses ends and purposes with the powers and under the conditions and Provisions before written And that yo[u] give such Sasine by Delivery Delivery of earth and Stone of and upon the ground of the said several subjects respectively & successively after other and all other symbols necessary to the said Trustees or their foresaids or their attorney or attornies in their names bearers hereof and and for doing whereof I commit to you and each of you full power by this my Precept of Sasine. In Witness Whereof these Presents consisting of this and the eight preceding pages, together with the marginal addition on page fifth hereof all written upon stamped paper by Alexander Allan Clerk to Alexander James Russell Clerk to the Signet are (under the declaration that the words "of my said" on the seventh line from the bottom of said fifth page are written on an erasure) Subscribed by me at Edinburgh the Eighteenth day of December in the year Eighteen Hundred [p.943] Hundred and forty four before these Witnesses John Russell Esquire one of The Principal Clerks of Session and James Nielson Clerk to the said Alexander James Russell (signed) H Cockburn John Russell witness J Nielson Witness I the Honourable Henry Cockburn Above designed Considering that the Recent death of Thomas Maitland of Dundrennan makes it expedient for Me to add to the number of my Trustees Therefore in addition to my Spouse Elizabeth Macdowall or Cockburn And to Archibald Davidson Esquire before designed I now name and appoint my eldest son Dr Archibald Cockburn and my son in Law Thomas Cleghorn Esquire Advocate to be two of my Trustees and Executors under the Trust Disposition and Settlement before written with all the powers and immunities specified in the said deed and that in the same manner and to the dame effect as if they had had been Originally named as Trustees In Witness whereof I have subscribed These presents written at the end of the said Trust Disposition and Settlement by James Keay Clerk to Mess[ieu]rs Lindsay, Mackay and Howe Writers to the Signet Edinburgh at Edinburgh The third day of April in the year Eighteen hundred and fifty two Before these witnesses Alexander Howe Writer to the Signet Edinburgh and the said James Keay (signed) H. Cockburn Alex Howe Witness Jas Keay Witness. I the Honourable Henry Cockburn One of the Senators of the College of Justice Considering that by Contract of Marriage dated on or about the Sixteenth day of March Eighteen Hundred and eleven entered into between me and Mrs Elizabeth McDowall or Cockburn my wife, I became bound to provide such a sum of

money as with the money assigned over to me by the said [p.945] said Elizabeth McDowall in manner therein mentioned would make up the total sum of two Thousand pounds sterling which sum of two thousand pounds I bound and obliged myself to invest as therein mentioned and to take the Rights and securities thereof to myself and my said Spouse in conjunct Fee and liferent for her the said Elizabeth McDowalls liferent use Allenarly after my death in case She should happen to survive me, And to the children one or more to be procreated of the said marriage in fee, and that equally among the said children, or according to such proportions and divisions as I should thereafter fix and appoint And further considering that in further contemplation of the said Marriage I Bound and obliged myself to content and pay to the child or Children whether male of female to be procreated of the said marriage, Over Over and above the aforesaid capital Sum provided in fee to the children the further provisions or sums of money following vizt the sum of Two Thousand pounds to one child the sum of Three Thousand pounds sterling to two and the sum of five thousand pounds sterling to three or more children to be divided in such proportions as I should think proper and farther considering that by my Trust Disposition and Settlement dated on or about the Eighteenth day of December Eighteen hundred and forty Four I conveyed my whole Heritable and moveable Estate to the said Mrs Elizabeth McDowall of Cockburn my Wife, Thomas Maitland of Dundrennan now deceased and Archibald Davidson Advocate, and to any other person or persons whom I should thereafter Appoint by a Writing under my Hand or who should be assumed in virtue of the powers therein after [p.947] after written as trustees for the purposes therein expressed, and particularly for payment of my debts and funeral expenses and for payment of all provisions to my wife and children, and all other obligations legacies donations or other bequests whatsoever granted or to be granted by me, and for such other purposes as I should direct and appoint by any writing under my hand as therein more fully expressed Our farther Considering that the said Thomas Maitland has died and that I have appointed my eldest son Dr Archibald Cockburn and my son in Law Thomas Cleghorn Esquire Advocate to be Trustees Under the said Trust Disposition and Settlement along with the said Mrs Elizabeth McDowall of Cockburn and Archibald Davidson and now seeing that I am desirous to exercise the Powers of division conferred on me by the said Marriage Contract and of Giving directions to my Trustees regarding regarding the Disposal of my Estate in manner underwritten Therefore in the First place with reference to the foresaid sums of Two Thousand Pounds provided to my children by the said Contract of Marriage and Considering that my Daughters have never received any thing beyond Maintenance and education from me whereas I have been obliged to Contract large debts for all of my Sons except George who received a Legacy from Lord Hermand each Of whom except George had already got more from me than any fair division of the said two sums could have given and it being in my Circumstances my special duty to protect my Widow & unmarried Daughters I do hereby divide and Allot the said two sums amounting together to seven thousand pounds as follows vizt (First) whereas [p.949] as my son Archibald has already discharged all his claims under the said Marriage Contract I hereby declare that he shall receive no share of the said tow sums or provisions but if it be necessary notwithstanding to allot a share to him then I hereby allot to him Five pounds Sterling (Second) I Allot to each of my sons James Henry Lawrence and Francis the Sum of Twenty pounds Sterling Provided that I, as I believe, have In the circumstances power so to Restrict the shares of these sons, But if I have not such power Then I allot to each of my said sons whose shares I have not power so to restrict the sum of

one hundred pounds Sterling (Third) I allot to my son George the sum of Two hundred pounds sterling But All these sums above allotted to my Said sons Respectively are to be

Paid only if they or any of them them insist on demanding payment which considering the circumstances I am satisfied that they never will (Fourthly) I allot to each of my Daughters who at the period of my death shall be or shall have been married the sum of one hundred pounds Sterling (Fifth) If at my death any of my Daughters shall be alive who shall not then be and shall never have been married, I direct and appoint the whole residue of the foresaid two sums amounting together to seven thousand pounds after paying the other children as above for such of them as may Claim their shares to be paid to the said surviving unmarried daughters equally among them if more than one and if only one then the whole of such residue to be paid to her and I allot the said residue to such surviving unmarried Daughters or Daughter accordingly (Sixth) If at the period of my death [p.951] death all the Daughters then alive shall be or shall have been married then and in that event after paying the sons as aforesaid I direct and appoint the whole residue of the said two sums to be divided and paid equally share and share alike among the said Surviving married Daughters, And I declare that if any of my Children shall predecease me Leaving issue who shall survive me such issue shall receive the Share which would have fallen to their parent had he or she been alive. And I farther Declare That although for the sake of convenience I have divided the said two sums of Two Thousand pounds and Five thousand pounds amongst My children as a cumulo sum of Seven (hundred) thousand pounds yet if it be necessary to divide the two sums Separately then and in that case I hereby divide the said two sums of of Two thousand pounds and Five thousand pounds separately Amongst my children as follows, That is to say, each child shall Receive a proportional share of the two provisions separately corresponding to the share above allotted to him or her of the whole sum of seven Thousand pounds so that each child shall in the whole receive from the two provisions together the Same sum as he or she would have received under the above division had there been only one cumulo provision of seven thousand Pounds In the Second place I Hereby but subject to the condition and declaration afterwritten, discharge all claims against my sons or any of them for advances made by me to them or on their behalf with the Vouchers and Instructions of the same but under this condition always that my said sons respectively shall not even if they have the power (which I [p.953] I think they have not) challenge these Presents in any respect and particularly the division hereinbefore made of the Marriage Contract Provisions before mentioned but shall ratify and confirm the same, Declaring that this Discharge shall be effectual only to those sons who shall comply with the above condition, and that in the Case of any son or sons not ratifying and confirming these presents in all Respects my said Trustees shall in that event claim payment from such son or sons of all sums advanced by me to or for him or them so far as such sums form legal claims against him or them In the third place with regard to the disposal of the Residue of my Trust Estate after paying my debts including the provisions settled on my Wife by our marriage Contract and the above mentioned provisions to my children I hereby direct my Trustees to apply and dispose of such residue residue in manner following vizt First My said Trustees shall out of such Residue pay a liferent Annuity of twenty pounds (free of legacy duty) to my old and faithful friend and servant Elgin Patterson whom I moreover as with my dying breath recommend to the care of all my children,

which annuity shall be paid half yearly at Whitsunday and martinmas beginning the first of these terms which shall happen after my death and so continuing during the lifetime of the said Elgin Patterson And I hereby empower my Trustees if they shall think fit to purchase the said annuity from some established Insurance office or otherwise and to pay the price and Expences of the purchase out of my residuary Estate. Declaring always that the said Alimentary provision and shall be paid to the said [p.954] said Elgin Patterson on her own receipt alone to the exclusion of the jus mariti or right of Administration of any husbands whom she may marry, (Second) My said Trustees shall pay the free annual produce or revenue of my said Residuary Estate after providing for the said annuity and deducting all annual charges to the said Mrs Elizabeth McDowall or Cockburn during all the days of her lifetime, after my decease and that in addition to the provisions settled on her by our Marriage Contract and to anything else she has received or may receive form me (Third) After her death they shall pay the said free annual Interest or revenue to such of my Daughters as may be then alive and may not be and never have been married equally share and share alike if more than one, or the whole of it to one if there be only one such Daughter and that that in addition to the their or her shares or share of the said Marriage Contract provisions and to anything else she or they may have received or may receive form me (Fourth) when by deaths or by marriages or by both there shall remain no Daughter who had never been married the I direct my Trustees to divide the fee of the said residue among all my immediate children (excluding grandchildren) who shall survive me, in such manner that each Daughter shall receive a double share, and each son a single share, that is that for each sum of one pound which a son shall receive each Daughter shall receive two pounds Declaring always that any child who shall not confirm t the division before made of the foresaid Marriage Contract Provision shall receive no part of my Residuary Estate but shall be Excluded therefrom as if he or she [p.956] she had never existed. But not withstanding of what is above provided regarding the disposal of my free residuary Estate I hereby authorise and empower my Trustees if they shall judge it expedient at any time or times during the subsistence of this Trust to invest the whole or such part or parts as they may think fit of the said residue (after providing for the annuity to Elgin Patterson) in the purchase of a life annuity for my Widow or in the purchase of a life annuity for any one or more of my daughters who may be unmarried at the time Declaring that my Trustees shall be the sole Judges of the expediency of so applying my residuary Estate or any part thereof and of the party or parties for whom and to what amount the said annuity or annuities should be purchased; and Declaring that the above directions directions regarding the application of the Revenue and fee of my residuary Estate (after providing for the annuity to Elgin Patterson) shall apply only so long and in so far as the said residue may not be invested in the purchase of an annuity or annuities as aforesaid. And I declare that I have given or shall give separate Directions to my Trustees regarding the disposal of my Manuscripts and other papers And I reserve full power to alter these presents in whole or in part at any time during my lifetime and even on deathbed. And I dispense with the delivery hereof. And I revoke all former Writings made by me relative to the division of the said Marriage Contract provisions and to the disposal of my Trust Estate furth the exception of the said Trust Disposition and Settlement itself and nomination of additional Trustees which I hereby confirm but [p.958] but under this Declaration and Condition always that if these presents should be effectually challenged on any ground in law such former Writings shall receive effect. And I consent to the Registration hereof for preservation In Witness Whereof I

have subscribed these presents written on this and the five preceding pages by James Keay Clerk to Mess[ieu]rs Lindsay Mackay and Howe Writers to the Signet Edinburgh the third day of April in the year Eighteen hundred and fifty two before these Witnesses Alexander Howe Writer to the Signet Edinburgh and the said James Keay (signed) H. Cockburn Alex Howe Witness Jas Keay Witness Extracted furth of the Books of Council and Session upon the forty seven preceding pages of Stamped paper by me George Ritchie Kinloch Principal Keeper of the Register of Deeds, Probative Writs & c[etera] conform to Act of Parliament and holding Commission to that Effect from the Lord Clerk Register of Scotland. Eight words on the eighth page delete before signing. (signed) Geo R. Kinloch Edinburgh 15 August 1854. This is the Extract of the Trust Disposition and Settlement and Deed of Division and Directions referred to in the oath emitted by me this day to the Inventory of the personal Estate of the late Honourable Henry Cockburn (signed) Thomas Cleghorn, T. Inglis Comr