" saids, to dig for stones, coal, sand, or any other thing within the " said ground, nor to use the samen in any other way than by the " ordinary labour of the plough and spade, without the express con- " sent and liberty of the Governors of the said Hospital, had and " obtained thereto for that effect."

Clelland built several houses upon different parts of the ground so feued by him. He likewise sub-feued three parcels of the ground to persons who built houses thereon. Afterwards he sold the remainder to the respondent; and Mr. Ferguson having made known his design of erecting buildings in the form of a square upon his area, the governors, on the ground that this would interfere with the interests of the Hospital, brought the present action of declarator, to have it found and declared, in terms of the above clause, that the feuar could not use the said ground in any other way than by the ordinary labour of the plough and spade without their consent. In defence, it was contended that there was no express prohibition against building houses, or erecting dwellings on the ground, which in this case was the legitimate object of the feu. And the respondent was only taking the beneficial use of those rights which are naturally consequent on the power of disposal in the vassal. That the superior could not extend the above clause to limitations and restrictions not expressed; and that the general words of the above clause cannot in law go beyond the particulars expressed. July 30, 1773.

The Court pronounced this interlocutor:—" Find the defender, " Walter Ferguson, is entitled to carry on his buildings on his own " grounds mentioned in the declarator." And on reclaiming petition the Court adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *Thos. Lockhart, E. Thurlow.*
For Respondent, *Alex. Wedderburn, Ilay Campbell.*

ROBERT GREIG, ROBERT MARSHALL, JAMES BELFRAGE, MICHAEL HENDERSON, and Others, . } *Appellants;*
JAMES BRUCE CARSTAIRS of Kinross, . . *Respondent.*

House of Lords, 24th Nov. 1775.

CHARTER—CLAUSE AS TO PUBLIC BURDENS.—Charters granted by a superior contained clauses exempting the *feuar* from all public burdens imposed, or to be imposed. Held, that this did not exempt from the expense of repairing or building churches or manses.

The appellants were feuars, and held feu-charters, granted by the respondent's ancestors, superiors thereof, whereby they were freed " of all public burdens and impositions imposed, or to be imposed,

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"upon their lands, for whatever cause or occasion, in all time "coming."

When a new manse was built, demand was made against these feuars for their rateable proportion of the expense. In consequence, they sought relief against the respondent, contending that the above clause in their charters exempted them from the expenses of building or repairing churches or manses as public burdens. It was answered by the respondent, that the words "public burdens" legally comprehended land-tax, ministers' stipends, and schoolmasters' salaries, the only fixed and permanent taxes on land in Scotland; but that this term, public burdens, did not include the rebuilding or repairing of churches or ministers' manses, which is of a personal nature, and uncertain in its nature, event, and amount.

July 11, 1772. The Lord Ordinary found the appellants "had no claim of "relief for any part of the expenses laid out by them in their re-"building or repairing the church, manse, or office-houses belong-"ing to the parish of Kinross; therefore, repel the defence founded "on that claim, and refuse the desire of the representation."

Jan. 23, 1773. On reclaiming petition, the Lords adhered. And, on second reMar. 5, —— claiming petition, and a third, the Court refused the prayers thereof.
Apr. 13, ——

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellants, *Al. Wedderburn, Ar. Macdonald.*
For Respondents, *Henry Dundas, Al. Forrester.*

JOHN Ross of Auchnacloich, ... *Appellant;*
MURDOCH MACKENZIE of Ardross, . . . *Respondent.*

House of Lords, 29th April 1776.

EXCLUSIVE TITLE — PRESCRIPTION — MINORITY — RES JUDICATA.—A deed was executed in favour of an infant, narrating that the granter was on the eve of going abroad, and conveying his estate. Thereafter debts were contracted by him, and a party having obtained right to certain adjudications over his estate, and obtained charter and infeftment thereon, and having thereafter obtained possession of the estate, and held it for more than forty years, held that the granter of the deed was not divested of the estate, and that the adjudging creditor had acquired an exclusive title by the positive prescription, and the minorities pleaded not sufficient to elide it. Also, that the decree formerly pronounced in the same matter was *res judicata.*

Alexander Mackenzie of Coul obtained judgment or decree of apprising against John Ross of Tollie, as charged to enter heir to his father, *Hugh Ross*, for the amount of four several bonds due by the father, and adjudging the lands of Tollie, and others therein mentioned, in payment and satisfaction of the accumulated sum of