

H. L. (Sc.) gentleman's conduct, and with what he said, is an intention not
 1905 to abandon his English domicil. I quite agree. I think the case
 HUNTLY is quite exhausted by the Scottish judgments, and the only
 (MARCHIO- conclusion is that the appeal ought to be dismissed.
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Ordered that this appeal be dismissed with costs.

Lord Lindley.

Lords' Journals, December 14, 1905.

Agent for appellants: *L. Weatherley, for Alex. Morison & Co., W.S., Edinburgh.*

Agent for respondents: *H. G. Church, for J. & A. F. Adam, W.S., Edinburgh.*

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H. L. (Sc.)	JOHN WHITE & SONS AND OTHERS	APPELLANTS ;
1905		AND
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River—Rights of Riparian Proprietors—Abstraction of the Whole of the Water from River—Ex adverso Mill Owners.

By the general law applicable to running streams every proprietor has a right to the ordinary use of the water flowing past his land, also rights may be acquired by prescription which interfere with the natural rights of other proprietors ; but the ownership of an artificial dam, although it may give a right to maintain the dam, does not turn the running stream into a pond so as to give the owner of the dam an exclusive right to use the whole of the running water.

APPEAL against an interlocutor of the Second Division of the Court of Session, Scotland. (1) *J. & M. White and others* (the respondents) were owners of the Old Mill of Partick on the river Kelvin, otherwise known as the Bishop Mill, and they raised this action for declarator. The appellants were John White & Sons, owners of the Scotstoun Mill, and were, with the owners of another mill called the Slit Mill, defenders to the action, but the latter had retired from the case, and the question was only between the owners of the Bishop Mill and the owners of the Scotstoun Mill.

(1) (1905) 42 S. L. R. 330.

These grain mills were on opposite sides of the river Kelvin. The Partick Mill dam was formed by a weir across the river Kelvin, which at this point flowed from east to west. The Bishop Mill was on the north side, and the Scotstoun Mill on the south side. They were nearly but not quite ex adverso. Both mills were supplied by water banked back by a dam which had been in existence for about 800 years. The conclusions of the respondents' summons (as amended) were: (1.) That they were entitled to the first waters of the Kelvin for the use of their mill as the same then existed as regards its capacity to draw water—that is to say, to the extent of 6000 cubic feet per minute (without prejudice to the rights and pleas of the parties in the event of any further extension of said mill), and that in preference to the Scotstoun Mill. (2.) That the owners of the Scotstoun Mill were not entitled to withdraw any water from the dam of the river Kelvin immediately above the respondents' and appellants' mills, or to allow any water to pass therefrom through their sluices at any time, save and except only when the dam was full and the water therefrom either standing level with the dam head or running over, and then only to the extent of 2077 cubic feet per minute. The Lord Ordinary (Lord Kincairney) found (July 6, 1904) that the first part of the conclusions of the summons seemed to claim unrestricted use of the water in the dam so long as it could be utilized for the Bishop Mill. That the second part of the conclusions seemed to deny the appellants' right to draw water from the dam except when it was full: and the learned judge absolved the appellants from these conclusions. The learned judge stated the facts as follows:—The Bishop Mill is of very ancient date. A charter of King David the First was produced. It appeared that the magistrates of Glasgow possessed the Bishop Mill for a very long period as kindly tenants, and that it was not until 1738 that they obtained a Crown charter. That charter proceeded on the narrative that past human memory the magistrates possessed the dam with the mill house and certain ground, "being parts of the barony of Glasgow," as kindly tenants and rentallers. The charter then proceeded to dispoise to the magistrates and their successors heritably and irredeemably the Mill of Partick, on

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the water of Kelvin, with thirlage and multures and the services at the mill all in the ordinary terms "*cum stagnis lie Damms Inlairs et aquæductis aliisque integris privilegis et pertinentiis ejusdem.*" Prior to that date it does not clearly appear that anyone except the magistrates made use of the dam. But about that time a company called the Smithfield Company built what is called a slit mill (namely, a mill for splitting iron), and they applied to the magistrates for leave to carry an aqueduct from the Partick Mill dam to a dam to be erected on their own ground for their slit mill. This petition was granted by the magistrates, and the aqueduct and dam were constructed, but the minute bears that the operation is to be conducted "in such manner that the said Mill of Partick shall receive no detriment or prejudice, and shall be kept in the same order and condition as it is now."

"This minute bears date, May 30, 1738, before the Crown charter, but it was confirmed by another minute dated January 3, 1740.

"The owners of the Scotstoun Mills were not mentioned in these proceedings.

"A deed dated 1780 by the Smithfield Company bears to sell and dispoine to one John Craig, Scotstoun Mill, with certain other subjects mentioned. First, the Scotstoun Mill was a waulk mill or fuller's cloth mill, for which, it was said, a mill dam was not essential. But that was not of importance, as the deed bears that 'it was now' (that is in 1780) 'made use of as a corn mill.' This disposition by the Smithfield Company (Slit Mills) to Craig bears the following clause: 'But alwise with and under this condition and provision as it is hereby expressly conditioned and provided that the said John Craig and his foresaids and the miln before disposed, shall have no right to the water of Kelvin until the Old Miln of Partick is first served, she having the first water, and untill our works at our Slit Miln on the water of Kelvin for rolling and slitting of iron and grinding of tools is next served, they being declared to have the second water, the same being hereby limited to three wheels the foresaid Waulk Miln of Partick hereby disposed being only to have the third water and for one wheel only. But in case at any future period

we or our foresaids shall find it convenient or necessary to discontinue the manufactory of rolling and slitting of iron and grinding of tools and shall instead thereof erect any other milns or machinery which may require a greater quantity of water than is now used by us, then and in that case the second water so now reserved for our present works shall in all times thereafter during the scarcity of water be applied for the driving the new machinery so to be erected in the proportions stated, namely, three-fourths of said water shall be applied for the use of the machinery so to be erected by us and our foresaids, and one-fourth thereof shall be applied for the use of the Scotstoun Miln aforesaid, or our said works so to be erected shall go eighteen hours of the twenty-four, and Scotstoun Mill shall go the remaining six hours. But in case that we or our foresaids shall have occasion in future to erect upon our works any water-wheels beside the foresaid three, all such wheels above three shall have no privilege of water (until the Scotstoun Miln is fully served) whether used as a corn miln or for other purpose, and shall only be used at such times when there is a superplus quantity of water in the river Kelvin running over the dam head after serving the Miln of Scotstoun as aforesaid.' "

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The owners of the Bishop Mill were not parties to this deed, although their right to the first water is affirmed or acknowledged in it. Then it is also said that the Slit Mill is to have the second water limited to three wheels, and the Waulk Mill of Partick (namely Scotstoun) is to have the third water and for one wheel only.

Owing to the American Revolution and the loss of that market for split iron, &c., "the Slit Mill was closed a considerable number of years ago, and no water has since been drawn from the dam on its account."

The Bishop Mill, after passing through intermediate owners, was sold and disposed to the respondents in 1897. Scotstoun Mill appears to have remained in the possession of John Craig and his successors until 1839, when it was sold to John Blackwood, and by him in 1854 to John White, father of the appellants, from whom it passed in 1897 to the present appellants. With regard to the possession and use of the dam by the Bishop Mill and

H. L. (SC.) Scotstoun Mill, it appears that the parties are agreed—(1.) that
 1905 Bishop Mill was entitled to draw, and did draw, the first water ;
 JOHN WHITE (2.) that from 1780 to 1865 the owners of Bishop Mill drew no
 & SONS more than 1200 cubic feet per minute. Further, the parties are
 v. agreed that about that time the Scotstoun Mill was in use to
 J. & M. draw 2,077 cubic feet per minute, but that only after the Bishop
 WHITE. Mill's right to the first water was satisfied.

Frequent litigation took place between the parties, the most important of which was before Lord Neaves in 1854. (1)

“In 1900 the pursuers (respondents) put up a turbine wheel and maintained that they were entitled so to use their “first water.” They also alleged that the Scotstoun Mill had on various occasions drawn water when the dam was so low as not to be sufficient for their preferable uses, and various other occasions of complaint and difference have arisen and questions as to their relative rights have been raised, to settle which this action was brought.

As to the meaning of “first water,” “the Scotstoun owners admit that the Bishop Mill owners are entitled to a certain preference which they call “first water.” But they maintain that the amount of first water must be determined by the previous usage, that is, to the extent of 1200 cubic feet per minute. On the other hand, the Bishop Mill owners claim the right to the water absolutely without any restriction, unless it be only that they are bound to use the water for the mill. They maintain that the deed of 1738 gave them an absolute right just as if the dam was a rood of agricultural land. There is no question about the property of the alveus ; it has not been suggested that anyone is proprietor of the alveus except the respondents under their Crown grant. But this question is about the water, not the alveus. For more than forty years the respondents drew a comparatively small part (1200 cubic feet) of the water from the dam and left the rest to others. The appellants maintained that, as riparian proprietors, though they were nothing else, they could object to the respondents' summons. They said that, conceding the respondents' right of property in the dam, still the respondents could not abstract more water

(1) The pleadings in these litigations were set out in the printed case.

from it than their prescriptive use warranted, because it was flowing water. The appellants further maintained that no property in the water could be acquired without appropriation.

The respondents maintained that their case was not affected by the negative prescription because, although they did not make full use of their property, their abstention was *res merae facultatis* and could not affect their right. For much more than forty years (perhaps a hundred) the proprietors of Scotstoun supplied their mill with water from the dam. They and the respondents were using the dam together. But now it was objected that they, the appellants, had no title on which their plea of prescription could be vested.

The Second Division of the Court of Session (Lord Young dissenting) by interlocutor dated January 20, 1905, recalled the Lord Ordinary's interlocutor and found in terms of the declaratory conclusions of the action.

Dec. 4, 5, 7, 8. *J. Avon Clyde, S.-G. for Scotland*, and *W. J. Cullen, K.C.* (of the Scottish Bar), for the appellants. The appellants admit that the respondents' Old Mill has a preferential right to the first water, but that preferential right is limited to 1200 cubic feet per minute. The appellants are, on the other hand, entitled to 2700 cubic feet after the Old Mill has taken its 1200 feet. The law of Scotland applicable to the right of opposite riparian proprietors is that each riparian proprietor is entitled to the natural flow of the stream as it passes his ground; that right arises from riparian ownership and does not depend upon ownership of any part of the solum of the stream. Further, each proprietor is entitled to veto the withdrawal of water for manufacturing purposes by the *ex adverso* proprietor, except in so far as the matter has been settled by agreement or in so far as the *ex adverso* proprietor has used the right of withdrawal for the prescriptive period of forty years; and secondly, when there has been prescriptive possession, the right thereby acquired is measured by the extent of the prescriptive use.

Assuming that the dam, so far as artificial, was originally constructed by the proprietors of the Old Mill, and was used for the prescriptive period; the measure of the acquired right to withdraw

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water in the future could not be greater than the prescriptive use which they had had. The ownership of the dam cannot enable the respondents to claim a larger right. The dam was a natural barrier of rock, the elevation of the water being raised by wooden boards two or three feet high. The respondents now claim the right to take the whole water in the Kelvin. The litigation between the parties shewed what the Old Mill owners thought was their right, and shewed that all the proprietors of the Old Mill claimed was 1,200 cubic feet. Further, it shewed that the Old Mill had not the whole water, as a surplus over its right of water was spoken of.

The Kelvin is not a very large river, and in the dry parts of the year the regulation of the water rights is a matter of practical importance. The whole contention of the appellants is against the expansion of the respondents' right. The case of the respondents is that their right is not limited to the capacity of the mill, as it existed before the memory of man, but is a right to all the water of the river. The question is, can the respondents enlarge their draught of water to-day to 6000 cubic feet, and perhaps to-morrow to 20,000 feet? In that case, there would not be enough for both. The discontinuance of the Slit Mill taking water conferred no additional right on the Old Mill, as against the owners of the Scotstoun Mill. The Scotstoun Mill originally possessed the right to the second water, subject to the prescriptive preferable use had by the Old Mill; and the restrictive use of the water by the Scotstoun Mill in 1780 was *res inter alios acta* in a question with the owners of the Old Mill, and could not enlarge the rights of the Old Mill.

[They referred to *Lyon & Gray v. Bakers of Glasgow*. (1)]

Scott Dickson, L.A., and *R. T. Younger, K.C.* (of the Scottish Bar), for the respondents. The judgment of the Second Division is correct. The respondents are entitled, by grant from the Crown, to the dam, and are entitled to withdraw water therefrom to such an extent as is required for the use of their mill. The appellants have by their documents no right to the dam at all. The respondents are not limited to 1200 cubic feet. They are entitled to withdraw 6000 cubic feet for the use of their mill, preferably to

(1) (1749) Mor. Dict. 12789.

the appellants. On the other hand, the appellants are limited to 2077 cubic feet when the dam is running over, that being the capacity of their sluices, and the result of the previous litigation.

The solum of the river at this point is the property of the respondents, and by grant they own the water at this part of the river. The dam in the documents was always referred to as the property of the owner of the Old Mill, and he was required to be at the expense of keeping up the weir. The appellants' title gave them a piece of ground which did not come down to the Kelvin; and also gave them a right of access to the water. If the owners of the Scotstoun Mill had been riparian proprietors there would have been no necessity to obtain the right of access to the river. The respondents had all the rights of the Slit Mill and the Old Mill. The amount now withdrawn by the respondents, namely, 6000 feet, is less than the amount withdrawn in past time by the Slit Mill (5515 cubic feet) and the Old Mill (1200 cubic feet), that is a total of 6715 cubic feet preferably to the Scotstoun Mill. The Slit Mill took its water by permission of the Old Mill, and its rights are continued to the Old Mill. So long as the Scotstoun Mill took in water when the dam was full or running over, the Old Mill had no interest to object. This is not a case of interest in a running stream. It is a case of interest in a dam, which the Scotstoun Mill owners had nothing to do with either by grant or prescription.

[They referred to *Smith v. Stewart* (1); *Gellatly v. Arrol* (2); *Leck v. Chalmers*. (3)]

J. Avon Clyde, S.-G. for Scotland, in reply.

The House took time for consideration.

Dec. 15. EARL OF HALSBURY. My Lords, a grant of a tract of a natural river and apparently of all the waters in it is a novelty in the law, and one which, upon the facts in this case, it seems impossible to insist upon. The rights inter se of the different mill owners are capable of being ascertained without much difficulty. Lord Kingsdown, in *Miner v. Gilmour* (4), stated the rule in terms that have generally been adopted ever

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(1) (1884) 11 R. 921.

(2) (1863) 1 M. 592.

(3) (1859) 21 D. 408.

(4) (1858) 12 Moo. P. C. 131, 156.

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since. By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land. Further, he may, subject to the condition that he does not thereby interfere with the rights of other proprietors either above or below him, dam up the stream for the purpose of a mill.

Of course, rights may be acquired by prescription, which, to some extent, do interfere with what would otherwise be the natural rights of other proprietors both below and above; and I have no doubt that it is here proved that the Old Mill has acquired the right which has been popularly known as the first water, and enjoyed it for a very long period. The extent of that right and the measure of what this involved is in this case one of the questions which have been debated at the Bar and in the Court below, but, as it appears to me, without sufficient reason. The question here is whether the Old Mill is entitled to the whole of the waters.

Apart from the extraordinary, and to my mind impossible, right suggested, which I have first mentioned (I will say no more about it than that there is not the least evidence to support it here), the question comes in this case to the ordinary controversy between proprietors of the banks of a running stream when their operations respectively interfere, or are alleged to interfere, with the operations of each other. In some curious manner—a manner which it is very difficult to understand—it seems to have been assumed in some of the arguments here that the artificial addition to the natural rock, which, to some extent, forms the dam, has made some difference to the rights of the parties. The right to maintain that artificial addition to the rock may be assumed; but it does not follow that the addition to the rock has in any respect altered the legal relations of the parties and made what has been part of a running stream hitherto less a running stream, or turned it into a pond, so that the water enclosed within that pond should become, not publici juris, but water with somewhat of a proprietary right.

A controversy not at all unlike the present arose in the county of Lancashire just one hundred years ago; the cause was tried before Graham B. in 1805. It appeared that mills

had been erected a very long time before, in 1724, and that additions had been made to them at successive periods of forty and twenty years by the defendants. In 1787 the plaintiffs erected their mills, but in 1791 the defendants altered their works, and the sluices by which their works were supplied from the River Irwell were considerably widened and deepened, so that nearly double the quantity of water was drawn from the Irwell than had ever before been taken. This was proved to have materially impeded the plaintiff's works; it interfered with the working of the comparatively new mills which had been erected in 1787. An action was brought before Graham B., and in dealing with the rights to which I have referred that learned judge said this to the jury: "The important period for them to attend to was 1791, when it was clear that an increased quantity had been drawn by the defendants from the river by means of the then newly enlarged and deepened sluices, before which time the plaintiff's works had been erected, and he was in the enjoyment of so much of the water as had not been appropriated by those under whom the defendants claimed. As a matter of law, I tell you that persons possessing lands on the banks of rivers have a right to the flow of the water in its natural stream unless there existed before a right in others to enjoy or to divert any part of it to their own use; that every such exclusive right was to be measured by the extent of its enjoyment."

This direction was objected to, and it was urged that the enjoyment by the defendants from 1724 downwards was evidence to be left to the jury of the defendants' right to the whole of the water. The Court of Queen's Bench, with Lord Ellenborough C.J. presiding, held unanimously that Graham B.'s direction was accurate, and some of them added that if the verdict had been the other way they would not have allowed it to stand. The case to which I refer is *Bealey v. Shaw*. (1)

My Lords, it appears to me that this principle which has been thus laid down and has been well recognized and acted upon as law for one hundred years, is decisive of the present case. According to that principle there is no ground for the contention

(1) (1805) 6 East, 208, 214.

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H. L. (Sc.) of the pursuers that they have a right of property in the dam and the water, and that consequently they are entitled to increase the extent of the use thereof as occasion requires. That is a proposition for which it appears to me there is no legal foundation whatever, and I think that the pursuers are not entitled to any preferable right to the use of the waters of the dam to a greater extent than is in accordance with prescriptive usage.

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This, my Lords, is sufficient for the decision of this case; we are not trying the exact proportion in which each mill may be entitled to draw water. That which the pursuers claim is an absolute and exclusive right to withdraw all the water. I think that claim is unfounded. I am unable to understand what one of the learned judges—Lord Moncreiff—says at the end of his judgment: “It is not necessary to say how matters would have stood if the pursuers had proposed to add so materially to the machinery of the mill as really to alter its character and deprive the defenders of any water for their mill.” I do not understand this proposition as a matter of fact, because that is what I understand the evidence to prove that the pursuers have actually done; nor do I understand it as a matter of law, since if the ground of judgment is right the pursuers here have a right to take all the water.

My Lords, I think the Lord Ordinary’s judgment is perfectly right and ought to be restored, and I move that the judgment of the Court below be reversed and the judgment of the Lord Ordinary restored with the usual consequences as to costs.

LORD ROBERTSON. My Lords, I cannot say that I think this a doubtful case; and it is permissible to believe that less difficulty would have been found in the Court of Session if it had been remembered that this is a question between riparian proprietors as to the water of a river.

The claim of the respondents is to withdraw from the river Kelvin, in preference to everybody else, 6000 cubic feet of water per minute, for the use of their mill. They fix on this figure because that is the requirement of their existing machinery, but they avow that if in the future their requirements increased

so would their claim. Now the 6000 cubic feet per minute only began to be abstracted in 1900, when they got some new machinery, and before that they used very much less water. Their claim, therefore, is not supported by prescriptive use.

Now, the theory of the respondents' case is that the water from which they abstract the water is the dam of their mill; but it is in fact a pool in the river Kelvin, the water of the river moving slowly through the pool owing to a natural obstruction of rock. Owing to this natural storage of the water, this part of the river has served the purpose of a dam for the respondents' mill, and the natural barrier of rock has been a little heightened by a ledge of wood. The central fact in the case, however, is that this pool, while it may be called a dam rightly enough in relation to the respondents' mill, is not the less, in juridical quality, a part of the river, and its water is subject to the common law of rivers.

Regarding this stretch of the Kelvin, the respondents' case is stated in *Condescendence 2* with a frankness which might well have excited the suspicion of the learned judges, for there the assertion is made that the respondents (whose frontage to the river is only a fraction of the frontage of the pool) have a grant not only of the (so-called) "dam in question" and "solum thereof," but of the "water therein." This proposition is, of course, opposed to elementary ideas about the water of a river, for the water would not be the property even of the exclusive owner of the solum and of both banks at the place in question. And yet when the present controversy is examined it will be found difficult to support the respondents' case on any other theory.

The claim being one of property, we look to the respondents' titles, and it is unnecessary to refer to more than two, the title of 1738 and the title of 1897. The former is a Crown charter; it grants the mill, which it describes as "super aquam de Kelvin," and then, after granting the thirlage and multures and other things, goes on, "cum stagnis lie damms, inlairs et aquæductis, aliisque integris privilegiis et pertinentus ejusdem quibuscumque," and so on. The respondents found on the words

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“cum stagnis lie damms” as embracing a grant of the water of this part of the river Kelvin. It would certainly be strange if so specific and so unusual a right were meant to be described or comprehended in the general plural expression stagnis, especially when the river Kelvin has, three lines before, been spoken of as a living river. It seems to me that the words in question, occurring as they do in the ordinary parlance of a grant of a Scottish mill, mean nothing more than that the disponent was to have such dams and such rights in those as pertained to the mill (whether in property or by subordinate right), and this construction is justified by the words “and other privileges” which almost immediately follow. They certainly cannot be construed as including a right of property in something essentially and juridically different from ordinary dams or stagna, as the plural is used of a word which in its ordinary sense applies to other things than rivers.

The title of 1897 (an ordinary disposition) gives the property as bounded by a red line, which excludes the river, but then it is added, “declaring, however, that the said red line, so far as bounding the said subjects hereby disposed along the river Kelvin, shall not limit or exclude our said disponents’ right in and to the said river, so far as we have power to grant same, nor to the water and water power and dam from which said mill is supplied.” It is superfluous to say that this does not advance the respondents’ case; and it is substantially an echo of the Crown charter of 1738.

The view of the Lord Justice Clerk is that the Crown charter has made the respondents so completely masters of the situation that they can use the whole of the water if they require it, to the exclusion of the other riparian proprietors. His Lordship does not expressly describe this right as a right of property in the water; but there is no other theory suggested. Yet that theory is so repugnant to the general law of rivers that it is surprising that there is no discussion of this difficulty.

If, then, the titles do not support the respondents’ claim, they have really no other case. The truth is that from time immemorial the respondents’ mill was in use to abstract water from

the river to the extent of the capacity of the sluices of their existing mill; and, in law, they thus acquired a legal right by prescriptive use to continue that abstraction. This historical fact was crystallized (in the later titles, and in the pleadings in various actions) in the expression that they had the first water; and it having been ascertained that the amount per minute actually abstracted was 1200 cubic feet, that figure was stated as the amount of their rights. Here we are on the solid ground of a predial servitude by possession, and the rule is *tantum prescriptum quantum possessum*. In this region there is, of course, no room for the maxims about *res meræ facultatis*, which have been applied to rights constituted by grant. On the other hand, it is equally obvious that the conception of a mill as a growing concern, with expanding requirements, has no place in a discussion with other riparian proprietors about a servitude constituted by use; and the discussion of this topic by the learned judges is, of course, due to their holding the respondents to have a grant of the water of the river. Taking, as I do, the opposite view, I hold that the respondents have no right to abstract the water of this river except to the extent to which they have had prescriptive use. It follows that their present claim wholly fails.

In what has been said, no examination has been made of the rights of the appellants, and this seems to me entirely unnecessary to the argument. It happens that they, too, have abstracted water, and, like their opponents, seem to have acquired prescriptive right to do so, subject to the earlier and preferable right of the respondents which I have described. But the exact measure of the appellants' servitude rights seems to me immaterial to the present controversy. Their sufficient locus standi is as riparian proprietors, resisting encroachment on their common law interest in the river Kelvin.

I have only to add that the suggestion that the respondents can piece on the rights of the Slit Mill to the rights of the Old Mill was so completely refuted by the Solicitor-General for Scotland that it is unnecessary to refer to it.

I am clearly of opinion that the judgment ought to be reversed.

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H. L. (Sc.) LORD LINDLEY. My Lords, I am entirely of the same opinion.
1905 I have studied these judgments with care, and the judgment of
JOHN WHITE the Lord Ordinary convinces me.

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*Ordered that the order appealed from be reversed ;
and that the respondents do pay to the
appellants the costs both here and below.*

Lords' Journals, December 15, 1905.

Agents for appellants : *Ingle Holmes, Sons & Pott, for
Alex. Morison & Co., Edinburgh, for Donaldson & Alexander,
Glasgow.*

Agent for respondents : *John Kennedy, W.S., for Mac-
pherson & Mackay, Edinburgh, for Brown, Mair, Gemmell &
Hislop, Glasgow.*

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H. L. (Sc.) CURTIS APPELLANT ;
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*Revenue—Income Tax—Unincorporated Association—Exemption—Income not
exceeding 160*l.*—Income Tax Act, 1842 (5 & 6 Vict. c. 35), ss. 40, 163,
168, 192—Finance Act, 1894 (57 & 58 Vict. c. 30), s. 34.*

An unincorporated association is not exempt from liability to the
payment of income tax by reason of its income not exceeding 160*l.*
a year.

APPEAL from a decision of the First Division of the Court of
Session (as the Court of Exchequer), Scotland. (1)

The appellant was F. J. Curtis, surveyor of taxes for Coatbridge,
Lanarkshire. The respondents were the Old Monkland Conserva-
tive Association, Coatbridge, and they were assessed to income
tax under Sched. A for the year 1903—1904 in respect of 65*l.*, the
annual value of the premises owned and occupied by them at
Coatbridge.

(1) (1904) 7 F. 119.