coal, it is hereby further declared, that as the question materially turns upon the construction of the covenant entered into by the Earl of Abercorn in the lease granted by him to John Biggar, therefore complete justice cannot be done, but in a suit to which the said Earl is a party; and it is therefore ordered and adjudged, that such part of the said interlocutor be, and the same is hereby reversed, without prejudice, and with liberty to the appellant to add proper parties to this; or to bring a new suit, as he shall be advised. And it is further ordered, that the Court of Session in Scotland do give all proper and necessary directions for carrying this judgment into execution.

For Appellant, *Al. Wedderburn, J. Dunning, John Maddocks.*

For Respondents, *Ja. Montgomery, Al. Forrester, A. John Ord, Ar. Macdonald.*

Note.—Unreported in Court of Session.

(M. 15,523.)

JOHN CARRE of Cavers, - - *Appellant;*
WILLIAM CAIRNS' WIDOW and CHILDREN, *Respondents.*

House of Lords, 6*th May* 1774.

LEASE UNDER ENTAIL.—Construction of clause in a lease, which, by the entail of the estate, was only to be granted for the lifetime of the granter, or for 15 years. Held good though granted for 19 years, and though the granter died before that term expired.

The appellant's grandfather, John Carre, granted a lease of the farm of Softlaw, for 15 years, to William Cairns, the husband of Mrs. Cairns, and father of her children, respondents.

The estate was held under strict entail, and contained the following prohibitory clause:—" That it shall not be lawful " to the heirs of entail to sell, analzie, wadset, or dispone, " redeemably or irredeemably, said lands, or any part there- " of, or to grant infeftments of annualrent or liferent furth " thereof, or to contract debts, or to do any other facts or

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" deeds, civil or criminal, whereupon said lands may be any-
" wise evicted, adjudged, apprized." Then after the irritant and resolutive clauses, this clause occurred as to leases:
" That notwithstanding of the irritant clause above men-
" tioned, it shall be lawful to the said John Carre, and re-
" manent heirs of entail, to set tacks of the lands, the same
" being only for the lifetime of the setter, or for 15 years."

William Cairns having, four years before the expiration of the above lease to him, applied for a new lease, to commence on expiry of the old, and having in view some improvements, he was desirous of obtaining the new lease for a term of 19 years. Accordingly, this new lease was granted him, bearing to be for the space of 19 years, provided the granter lived so long, if not, according to the power of leasing in the entail. His entry being at Whitsunday 1758, to the houses, grass, and pasture, to the arable land at the separation of the crop. The warrandice in this lease was, " at all hands, and
" against all deadly, as law will; declaring, that in case the
" said John Carre shall happen to depart this life before the
" expiry of this tack, then the obligation of warrandice above
" written, shall not extend any further than what is consis-
" tent with the powers he hath by the entail of the said
" lands, with respect to granting tacks."

The appellant succeeded to the estate, upon the death of his father, who died before the expiry of the 19 years, and he, conceiving the above lease expired at the end of 15 years, in consequence brought an action of removing in the Sheriff Court, in which, after various procedure, he obtained decree of removing; but the respondents brought a suspension of this decree, contending, that as the entail contained no prohibitory clause against granting leases, and as there was an express permission to grant leases for the possessor's lifetime, the present lease for the space of nineteen years was not affected by the entail. It was answered, that the words of the entail respecting the granting of leases were clear, express, and unambiguous, declaring, that it should not be lawful to grant leases for a longer term than the life of the granter, or for 15 years; and that, upon a sound construction of the lease granted, it cannot be sustained for a longer period than 15 years.

Jan. 19, 1774. The Lords, of this date, sustained the reasons of suspension, and suspended; and, upon reclaiming petition, they ad-

Feb. 22, —— hered.

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

Pleaded for the Appellant.—The prohibition contained in the deed of entail, is clear and unambiguous, restraining the heirs of entail in possession, from granting leases for a longer term than 15 years, or during their own lives. The lease granted to William Cairns in 1754, bears for the space of 19 years, provided the granter lived so long; but, in the event of his death, the term allowed by the entail, 15 years, was to be the period of its endurance; and the granter having died before the expiry of the 19 years, the lease was thereby reduced to one for 15 years. The want of registration of the entail has no bearing on this question, because the tenant is bound, by the terms of the lease, whether the entail be recorded or not; and these having bound the tenant to remove, "in case John Carre shall happen to depart "this life before the expiry of this tack," in which case, the warrandice was to extend no further than what was consistent with the powers he held by the entail; and the granter having died within that period, the lease cannot exist for longer than 15 years.

Pleaded for the Respondents.—An entail, by the law of Scotland, is held to be *stricti juris*, and no limitation of the heir's right is to be inferred by implication.—In the present entail, there is no substantive prohibition against granting leases; and even though there was one supported by irritant and resolutive clauses; yet if the entail itself was not recorded, the prohibition would go for nothing, and the entailer be entitled to grant leases. The right by the lease must be ascertained by the leasing clause, and not by the warrandice clause, in order to ascertain the endurance and ish or expiry thereof. As, therefore, there is no limitation in the leasing clause, of the term of endurance, to less than 19 years, the respondent was entitled to possession for that term. Even on the assumption that the lease was reducible, for want of power of the granter to grant a lease for longer than his own life, that question could not be tried in a mere action of removing; and being a matter of heritable right, was not competent before the Sheriff, nor upon the Act of Sederunt; but the matter is now set at rest by the principles above contended for, supported as these are, by the homologation of the appellant, in receiving rent from the respondents, after their father's death, under the new lease.

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ROEBUCK, &c. v. STIRLINGS.

After hearing counsel, it was
Ordered and adjudged that the appeal be dismissed, and that the interlocutors therein complained of be affirmed, with costs.

For Appellant, *Al. Wedderburn, Henry Dundas.*
For Respondents, *Ja. Montgomery, Alex. Murray.*

Dr. JOHN ROEBUCK and SAMUEL GARBET, *Appellants;*
Messrs. WILLIAM and ANDREW STIRLING, Merchants in Glasgow, - - } *Respondents.*

House of Lords, 27*th May* 1774.

PATENT—PREVIOUS USE.—A patent obtained for an invention in Scotland, is invalidated by proof of previous use in England.

This was a suspension and interdict brought by the appellants, owners of a patent obtained by them, for an invention for extracting spirit of vitriol from sulphur and saltpetre, in vessels of lead, and likewise, also for purifying the same, in vessels of lead, which was done by heating these over fire. The spirit was used among manufacturers for staining, printing, and bleaching linen, &c. They prayed to have the respondents, merchants in Glasgow, interdicted from using their invention, at their works in Glasgow. Long before the date of the patent, the appellants had been, at least for 20 years, in the private use of the invention, at their works in Prestonpans,—keeping it a secret from all, and enjoying a monopoly of the benefits which it conferred.

Originally the oil of vitriol was made from setting the sulphur on a fire; and hanging over the burning sulphur a bell or hollow vessel of glass, which condensed the fumes of the sulphur, and made the spirit or oil, trickle down the sides of the glass. Afterwards an improvement was effected, which had in view to prevent a large portion of the fumes from escaping into the open air, which took place by the above mode. This was by distilling the oil or spirits from calcined vitriol, in glass retorts, by means of a strong fire.

The late Dr. Ward effected a further improvement, so as to produce a saving in expense, and to admit of selling the article cheaper, which was by burning the sulphur in close vessels, by means of a mixture of saltpetre, by which the