with, fourteen different superiors, the fine and sum to be paid the superior for relief, on granting such entry, besides the non-entry duties for the years that the vassal was unentered. 3d, He would have to account to fourteen different superiors annually, for the quit-rents, whether they were feu or blench duties, by which he held the lands.

The Court pronounced this interlocutor:—"The Lords "having advised this petition with the answers, they repel "the reasons of reduction in so far as relates to the charter "in favour of the Marquis of Graham, and with that variation, "adhere to the interlocutor of the Lord Ordinary reclaimed "against, and refuse the desire of the petition: Find expenses "due; and appoint an account thereof to be given into "Court." On second reclaiming petition the Court adhered. Feb. 17, 1781.

Feb. 1, 1781.

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

After hearing counsel,

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellants, *Henry Dundas, Tho. Erskine.*

For the Respondent, *David Rae, Ilay Campbell.*

JAMES DALRYMPLE, Esq., and Dr WILLIAM DALRYMPLE, one of the Ministers of Ayr, JOHN BALLANTINE, Merchant in Ayr, WILLIAM PATERSON, Writer in Kilmarnock, and Others, . . . } *Appellants;*

ROBERT HUNTER, Esq. of Thurston, and ELIZABETH, COUNTESS OF GLENCAIRN, JAMES, EARL OF GLENCAIRN, and Others, ... } *Respondents.*

House of Lords, 17th June 1784.

ENTAIL—FETTERS.—An entail prohibited the sale of the estate, and laid the fetters on the "substitutes *before mentioned* and *described by name.*" Held that this was sufficient to include within the fetters the descendants of the body of those substitutes.

The lands of Orangefield and Prestwickshaws, having been sold to the respondent, Mr Hunter, a question arose whether

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DALRYMPLE, &C. *v.* HUNTER, &C.

the parties had a power to sell. The purchaser brought a suspension of a charge for the price, alleging that the sellers could not give a good title, because the estate was held under the fetters of a strict entail, which prohibited selling. On the other hand, the appellant, Mr Dalrymple, brought an action of declarator, calling the respondent, Mr Hunter, and the heirs of entail, to have it found and declared, that Miss Macrae Macquire had full power to sell the lands in question; at least that he had such power.

These two actions were conjoined, and memorials ordered on the points.

The entail was conceived in these terms:—"To and in "favour of Miss Macrae Macquire, and the heirs male of her "body, whom failing, her heirs female, whom failing, to Miss "Margaret Macquire, and the heirs male and female suc- "cessively of her body; whom failing, to Miss Jacobina "Macquire, or Countess of Glencairn, and the heirs of her "body, in like order," &c. It also contained this prohibition, —"That it shall not be allowable to the said Miss Macrae "Macquire, nor to any of the substitutes *therein mentioned* "and *described by name*, to sell or dispose upon any part of "the lands and barony foresaid, nor to contract debts, or to "do any other deed whereby the same may be evicted from "any of the succeeding substitutes." These prohibitions were enforced by irritant and resolutive clauses, and the entail was duly recorded.

The irritant clause declared, "That if the said Miss Macrae "Macquire, or any of the *substitutes before mentioned and* "*described by name*, shall do on the contrary hereof, not only "the deeds of contravention shall be absolutely void and "null," &c.

Miss Macrae Macquire was stated to be the institute in this entail. She was afterwards married to Mr Dalrymple. The appellant, James Dalrymple, was her son, and of course a substitute under the entail.

In 1781, she, with consent of her said son, had executed a new settlement, whereby she conveyed the estate in favour of him, and the "heirs male of his body;" and it was afterwards sold as above stated.

The appellants' plea was, That Mr Macrae, the maker of the entail, meant only to *limit* the *substitutes called by name* but not the substitutes *not named*, and, therefore, his intention was to allow the estate to descend in fee simple to the children of the bodies of those substitutes. It was answered, that such a

proposition could not be entertained. 'That it could not be meant to fetter all the substitutes *named*, and at sametime to leave all their unborn issue unfettered, as such a construction would be untenable and absurd. An entail imposing prohibitions and irritances upon the substitutes called by name, and yet leaving the entail to descend in fee simple to the heirs of those substitutes, was anomalous, and totally unprecedented in the law of Scotland.

Upon the report of Lord Stonefield, and having advised the memorials ordered, the Court pronounced this interlocutor: March 4, 1783.
"Sustain the reasons of suspension pleaded for Robert "Hunter of Thurston, and the defences pleaded for the "Countess of Glencairn and others, suspend the letters, as- "soilzie them from the declarator, and decern."

Against this interlocutor the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and ajudged, that the interlocutor be, and the same is hereby affirmed.

For the Appellants, *Henry Dundas, Ilay Campbell.*

For the Respondents, *Robt. Blair, Alex. Tytler.*

MARSHALL, and the STIRLING BANKING COMPANY, and Others, . . *Appellants;*

JAMES STEIN, ... *Respondent.*

House of Lords, 27th May 1803.

This case is reported in Vol. iv., p. 480, which had reference to certain objections stated by the creditors of a bankrupt, to his application for his discharge, with the usual concurrence. Since that report was published, the short-hand writer's notes of the full speech have been recovered, as below.

LORD CHANCELLOR ELDON said:—

"MY LORDS,*

"This case appears to me to be of great importance, and to call for your Lordships' particular attention before it is decided.

"My Lords, it is an appeal from the Court of Session in Scotland, in a case which I confess I read with some degree of sur-

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* From Mr Blanchard's short-hand notes.