his elder brother Alexander, he is entitled to take the estate in that character. The term heirs male is not of a flexible nature. It has a distinct technical meaning, and includes all heirs male, whether of the body or collaterals. It cannot be applied to heirs of line, because then it would include heirs female, and it cannot be construed only to mean descendants, because then it would exclude brothers, for construction, or presumptions, just because there is on uncles, and nephews. Hence it follows that there is no room room for a *questio voluntatis.*

After hearing counsel, it was .

Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *Ilay Campbell, J. Scott, T. Erskine.*
For Respondent, *Alexander Wight, William Tait.*

ALEXANDER GRANT of Edinburgh, . *Appellant ;*
EARL of Morton, . . . *Respondent.*

House of Lords, 8th June 1789.

LEASE—REMOVING.—A lease, with a clause generally against subsetting, permitted the tenant to subset part of the subject, which was done accordingly. No rent was ever paid by the subtenant to the landlord, nor to the tenant from whom he had his sublease, while there was a clause in the lease that the tenant should be liable in payment of the rents of the whole subject. The tenant failed, and an action of ejection being raised and decree passed, Held that the decree of removing was a good decree, although only raised against the principal tenant, and clearly entitled the landlord to eject the subtenant from the part held by him.

The Earl of Morton set by lease to Alexander Rodger, his heirs, (excluding assignees and subtenants), the farm of Haggs, with the pertinents; the farm of Cumberland, with pertinents; the houses, lands, crofts, and acres, in the town of Dalmahoy, with pertinents; and, lastly, the farm of Burnwynd, with pertinents, all lying in the barony of Dalmahoy, and county of Edinburgh, and that for thirty years from Martinmas 1771, at a rent of £147. 10s.

There was this clause in the lease:—"That notwithstanding the prohibition to subset, the said Alexander Rodger and his foresaids shall have liberty to subset the pendicle

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beyond the Moss, and the houses at Burnwynd; the houses of Cumberland, and the houses in the town of Dalmahoy; he and his foresaids being always liable to the Earl and his foresaids for the whole rent before mentioned, without any regard to these subsets."

The appellant Grant, took a sublease from Rodger, of the dwelling house and Mains of Dalmahoy. There was no rent specified, except that he was to pay a rateable proportion of what he, Rodger, was obliged to pay the Earl for the whole; and, in case they could not agree, to be fixed by two persons mutually chosen.

The appellant entered into possession. The precise rent he was to pay was never fixed, and he had paid no rent to Rodger for many years, there being other transactions between them, which made Rodger considerably the appellant's debtor. In the meantime, Rodger fell several years in arrear of his rent to the respondent, and, after many plans and efforts to pay off these arrears, a sequestration was awarded and executed, while at the same time, an action of removing under the Act of Sederunt, was brought against Rodger.

In this removing before the Sheriff, the appellant Grant appeared, and contended that the part of the farms subset to him was not included. The Sheriff ultimately decerned in the removing, both against Rodger and his subtenants.

A suspension and reduction of this decree were then brought, and, after various procedure, the decree of removing was found orderly proceeded in, and Rodger ejected.

Thereupon the Earl proceeded to take possession of the grounds occupied by the appellant, as the subtenant of Rodger, when the present bill of suspension was brought by the appellant, on the ground, 1st. That his under lease from Rodger was not determined by the decree of removal against the principal tenant; 2d. That what had passed between him and the respondent's steward, was equivalent to a new lease from the respondent; 3d. That he owed no rent, so that the foundation of the proceedings against Rodger did not apply to him; and, 4th. That he had no warning or notice to remove.

Feb. 7, 1789. Mar. 11, —— The Lord Ordinary, after reporting the case to the Court, refused the bill. On reclaiming petition the Court adhered.

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—The decree of removing obtained against the principal lessee in the present case, never

can be a ground for awarding execution against the appellant, his subtenant, 1st. Because the appellant, who had obtained possession on his sublease, was not made a party to the suit; 2d. Because the decree was obtained for a special purpose, in order to enable Rodger's creditors to sell his leases for their payment, which was the sole object of the decree. Besides, the appellant's possession under the sublease was recognized by the landlord in a variety of acts which led him to believe, that the subset would be good to him for the full endurance of the lease. Further, the decree cannot authorize the proprietor to eject the appellant from his subset lands, as those lands are not mentiond in it.

Pleaded for the Respondent.—By the lease to Rodger, he was permitted to subset certain parts of the lands, but even as to these, it was declared, that he was to continue liable in payment of the rents to the landlord, without regard to those subsets, and therefore it is of no consequence to inquire whether the lands said to have been subset by him to the appellant, were included in those for which he had the permission, nor whether any formal subset was in fact made; as the appellant was never recognized as a tenant by the respondent, or ever paid or tendered rent as for himself, the respondent has no concern with him. The principal lease being voided, and decree of ejectment obtained against Rodger, and all dependant on him, it is impossible that possession can be maintained, by virtue of any right flowing from, or agreement made with him, which must all fall with the original or principal right. The Act of Sederunt 1756, regulating the process of removing, expressly declares, that a decree against the principal tacksman shall be effectual against assignees or subtenants. It is a mistake to say that the decree did not include the lands subset to the appellant. It includes the whole farms with their pertinents let to Rodger. The farm of Haggs is mentioned; and it is admitted that the lands subset to the appellant are a part of the farm of Haggs.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be affirmed.

For Appellant, *Alexander Wight, William Tait.*

For Respondent, *Ilay Campbell, W. Dundas.*