

Dec. 3, 1813;
June 1, 1814.

ing to the true meaning of the covenant, and the consequences ought to fall upon him.

COVENANT.—
CHURCH-
LEASE.

Decrees of the Court below *affirmed*.

June 1, 1814.
Judgment.

Agent for Appellant, BEDFORD.

Agent for Respondents, LANE.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION,

LAWRIE and others—*Appellants*.

LAWRIE—*Respondent*.

July 27, 1814.

LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.

JUDICIAL sale of part of an entailed estate, for redemption of the land-tax, made by decree of the Court of Session, under authority of the Acts of Parliament, afterwards reduced; the terms of the act not having been complied with, &c. and the heir of entail in possession having been himself the purchaser, by the intervention of a trustee. This judgment affirmed in the House of Lords, on the ground of the particular relation in which the purchaser stood with respect to the estates.

Lord Eldon, (Chancellor,) observing, that the question would have been a very serious one, if it had been the case of a stranger purchaser; and *Lord Redesdale* saying, that it would have been very difficult to reduce such a sale, in the case of a stranger purchaser.

Reduction.

THIS appeal arose out of an action brought before the Court of Session, for reduction of a sale of part

of an entailed estate, made by decree of the Court of Session, under the authority of the Land-tax Redemption Acts.

July 27, 1814.

LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.

38 Geo. 3,
cap. 60.—
39 Geo. 3,
cap. 40.

Mr. Sloane Lawrie, who held the estates of Redcastle and Bargattan under two separate entails, in which the substitute heirs were different, applied to the Court of Session to have the farm of Edgarton, on the estate of Bargattan, sold, for the redemption of the land-tax of both estates. It appeared that Mr. S. Lawrie, if aware of the fact, had concealed that the estates were held under distinct entails. The Court (July 11, 1799) pronounced for the sale; and the farm was purchased by Mr. S. Lawrie's factor and agent, as trustee for Mr. Lawrie himself; who, on Mr. S. Lawrie's death, conveyed the farm to his sisters, the Appellants, his representatives.

Sale.

The grounds of the action of reduction brought by the Respondent, the next heir of entail, as stated in the condescendance given in on his behalf, were these:—

Grounds of re-
duction.

1st, That Mr. S. Lawrie, when he made his application to the Court, knew perfectly well, as indeed it was impossible he should be ignorant, that one part of the entailed estate was held under one entail, and the other under another, each of them destined to a different series of heirs; and that, with a view to injure the Pursuer; the heir, under both destinations, as well as for the purpose of obtaining an undue and great advantage to himself, he chose as a subject for a sale the farm of Edgarton,—which, by the destination of the entail in which it is contained, he knew would become a fee-simple in the Pursuer's person, in the event of his having no

July 27, 1814.

LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.

heirs male of his body,—and applied part of the price to redeem the land-tax of the whole lands under both entails; whereas, he was bound by the Act of Parliament to have made two separate applications,—one for each of the entailed estates,—in order that a part of the lands under each entail should be sold, and the price obtained for each of the parcels applied to redeem the land-tax payable out of the lands contained in each of the entails respectively. This proposition neither requires nor admits of any other proof than the terms of the two entails, and the proceedings in the Court; from which last it appears that this circumstance was entirely kept out of the view of the Court.

2d, That the land-tax of the whole lands in both entails amounted only to 17*l.* 18*s.* 3½*d.*; viz. 8*l.* 1*s.* 11½*d.* out of the lands in the first entail, which does not terminate in the Pursuer's person, and 9*l.* 6*s.* 4*d.* out of the lands in the other entail, which includes the lands of Edgerton, and terminates in the Pursuer's person: that, to have afforded a sufficient price for purchasing the whole land-tax, there were other smaller farms, &c.

3d, The Pursuer offered to prove that Mr. S. Lawrie purposely kept back from the Court all the above circumstances, which it was his bounden duty to have laid before them. That he did so, stands established by the records of the proceedings. That he did so purposely, being a matter of intention, can only be proved, or rather inferred, from what followed.

4th, That at the sale of the lands, no proof of the value was laid before the Court, and which the

Pursuer has undertaken to prove to have been 8000*l.* were set up at 21 years' purchase of the old rent, by Mr. Hunter, Mr. S. Lawrie's own agent, and trustee for the sale, at 1680*l.* That to give the appearance of a competition, the reality of which had been precluded by its having been made known that Mr. S. Lawrie was desirous of acquiring the lands, a confidential friend was brought forward, who bade the upset price, and, upon Mr. Hannay, Mr. S. Lawrie's factor, offering 10*l.* more, gave up the contest, and allowed the lands to fall into Mr. Lawrie's hands at 1690*l.*

July 27, 1814.

LAND-TAX OF
ENTAILED ES-
TATES —PUR-
CHASER.

The Lord Ordinary, thinking there was sufficient evidence without resorting to parole proof, took the cause to report to the Court on informations; and the Court, by interlocutors, May 22, 1805, and Feb. 11, 1806, reduced the sale; "reserving to the Defenders all claims of relief competent to them." From this judgment the Defenders appealed.

Judgment, re-
ducing the
sale.

Lord Eldon (Chancellor.) This case arose out of a transaction very singular in its nature, and one which required little now to be said about it, except to take care that the effect of their Lordships' judgment should not be misunderstood. If the question were, whether a stranger, purchasing under the Acts for the Redemption of the Land-tax, and the authority of the Court of Session in the administration of these acts, could be disturbed, it would then be a question of very great interest: and he was anxious to have it understood, that he gave no opinion whatever on the point so put. But he was of opinion, that considering the relation in which Mr.

Observations
in Judgment.

Case would
have been very
serious, if it
had been that
of a stranger
purchaser.

July 27, 1814.

LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.

Judgment
well founded,
on account of
the relation of
S. Lawrie
with respect
to the estates.

Sloane Lawrie stood with regard to the estates, an implied duty to the Court, and to all who had an interest, rested on him in such a manner, that whatever might be the case with respect to a stranger purchaser, the Court had authority in his case to interfere, and that the judgment which it had given was well founded. The relation in which S. Lawrie stood with respect to the estates gave the Court jurisdiction to do as they had done.

On the best attention which he could give to the circumstances, it did not appear to him necessary to alter the interlocutors, if he understood them. There was a reservation of relief, which saved the equities that arose out of the transaction and judgment. But, lest any difficulty should occur as to that point, there might be a declaration, that all whose interests were affected should be entitled to relief. An additional declaration had been taken, founded on the nature of the service; but their Lordships could give no opinion on that point, as it had not been under consideration by the Court below. The interlocutors might therefore be affirmed, subject to such alterations as might appear proper in case of an application to review the judgments upon the ground of the nature of the service, which had not been before under the consideration of the Court.

Difficult to re-
duce such a
sale in the case
of a stranger
purchaser.

Lord Redesdale. He thought it important to say, in the case of a stranger purchaser, it would have been difficult to reduce the sale. He considered this judgment as resting simply upon the relation in which Mr. S. Lawrie stood with respect to the estates.

Judgment *affirmed*—subject to alteration as above. July 27, 1814.

Agent for Appellants, SPOTTISWOODE and ROBERTSON.

Agent for Respondent, CHALMER.

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LAND-TAX OF
ENTAILED ES-
TATES.—PUR-
CHASER.
Judgment.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

FRASER—*Appellant*.

CHISHOLM—*Respondent*.

WHERE a claim to a right of common on the high grounds, in the Highlands, depends on usage and possession, it must be a very strong and clear case of usage that can support the claim, as trespasses may be so very easily committed. July 27, 1814.

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HIGHLAND
BOUNDARIES.

—◆—

THIS was another question as to highland boundaries, arising upon an action in the Court of Session, to have the Appellant's (Fraser, of Lovat) exclusive right, in virtue of his title to the barony of Beanly, declared to certain lands upon which, as he contended, the Respondents, to whom or their predecessors certain parts of that barony had been feued at different times, had improperly encroached, on the ground that the lands in dispute were common property. After much difference of opinion, and contradictory interlocutors, the Court below decided in favour of the Respondents, and Fraser appealed.

Vide ante,
Seaforth v.
Hume, 338.

The ground on which the Respondents alleged