1816.

GRAHAM, &c. *v.* DIXON, &c.

particular fabric. It never was a salmon-fishery, and cannot lawfully be converted into one, to the prejudice of the estate vested in the respondents. 3d, The appellant, Mr Graham, has no right, by his charter, to a particular *mode* or fashion of fishing. He has merely a right to a particular known fabric called Ardoch yair, or the yair of Ardoch. 4th, As Ardoch yair is an ancient and well known fabric, constructed for taking herrings and white fish, the stake net, which is a newly invented instrument for taking salmon, is not an *improvement* of this fabric, but a totally different instrument. 5th, The stake net constructed by the appellants for taking salmon, blockades the river Leven, and unduly injures the salmon fishery of that river. 6th, The stake net erected by the appellants, is an instrument which cannot lawfully be used for taking salmon in Scottish rivers.

On the cross appeal:—

1. The law of Scotland rejects popular actions. Mr Graham of Gartmore has no legal title, and no interest to complain of the mode in which the Magistrates of Dumbarton exercise their salmon fishery. He can lose nothing by their using a stake net, and it was not competent for the Court of Session to sustain any action or judicial process instituted by him or his tenant, for the purpose of interrupting or restraining the Incorporation of Dumbarton in establishing a stake net, or any other instrument which they could devise for taking salmon. 2d, Mr Graham of Gartmore has no right to alter the form or position of the yair of Ardoch. This ought to have been *declared* by the Court of Session in Scotland.

After hearing counsel,

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

For the Appellants, *Sir Saml. Romilly, John Clerk, James Moncreiff.*

For the Respondents, *Wm. Adam, Ro. Forsyth.*

1816.

[Fac. Coll., Vol. xvi., p. 429.]

MOLLE *v.* RIDDELL.

WM. MOLLE, W.S., Trustee of the REV. JOHN EDGAR, Minister of the Gospel at Lymington, ... *Appellant;*

WM. RIDDELL of Camiestoun, Esq., W.S., *Respondent.*

House of Lords, 19th June 1816.

FEE OR LIFERENT — ALTERATION OF DESTINATION — NEGATIVE PRESCRIPTION—PAROLE TO CONTRADICT WRITING—MANDATE. 1st, Held that a destination to the grantor's daughter in liferent, and to the heirs-male of her body, whom failing, to the heirs-female of her body in fee, gave a fee to the daughter, and that she had power to alter, and had effectually altered the destination, though in a form, so as to create qualification for voting. 2d, Held, that the destination in the reconveyance of the *dominium utile* in 1779, must be held *presumptione juris* to have been authorized by, and the act of, Mrs Hunter, the daughter, and that parole evidence was incompetent to cut down that destination, or to prove the contrary. 3d, Held, that the service of Colonel Hunter during his absence abroad, was sufficiently authorized under the general commission held by the respondent to manage his affairs.

Richard Edgar, Esq. of Newton, stood vested in the estate of Newton. He had two sons, but they had predeceased him. His only daughter was married to Dr Hunter of Linthill in Roxburghshire.

Of this date, he executed a general disposition of his estate and effects heritable and moveable in favour of his daughter, Mrs Hunter, *and her heirs and assignees*, to take place at his death. Sept. 2, 1766.

In December of the same year, he executed a deed, settling his estate upon his daughter, Mrs Hunter, "in liferent, and "to the heirs-male to be procreated of her body, by the pre- "sent or any subsequent marriage; whom failing, to the "heirs-female of her body in fee; *whom failing, to my own* "*nearest heirs* whatsoever, also in fee, heritably and irredeem- "ably, &c." There was no revocation of the former deed of 2d September in this latter deed; and Mr Edgar died on 18th March 1767, following. Dec. 15, 1766.

After his death, Mrs Hunter and her husband made up titles to the estate of Newton, by special service and retour, of this date, neglecting altogether the personal deed of 1766, and serving herself as "nearest and lawful heir of her father." Upon this, she was infeft in the fee of the estate. April 30, 1767.

In 1779, Mrs Hunter and her husband having resolved to create freehold qualifications, upon their estates in Berwickshire and Roxburghshire, and to settle those estates of new, so that the fee of both estates should go together in the same channel, the respondent, Mr Riddell, who was the

1816.

MOLLE
v.
RIDDELL.

Doctor's nephew, and ordinary man of business, was employed in framing the deeds.

July 20, 1779. At that time they had four children alive, Richard Edgar Hunter, William Hunter, and two daughters.

Aug. 6, 1779. Of this date, the Doctor executed a procuratory of resignation of his estate of *Linthill*, upon which a Crown charter was expede, in favour of himself and *his heirs and assignees*. He then granted a feu right of the property of that estate to the respondent, Mr Riddell; and after having made a liferent disposition of as much of the superiority as created a vote in favour of another relation, Robert Riddell, he conveyed the remainder of it, which afforded a separate vote, to and in favour of himself in liferent, "and Edgar Hunter, his eldest "son, *and his heirs and assignees*, whom failing, to William "Hunter, his second son, and *his heirs and assignees*, heritably "in fee."

Sept. 20, 1779.

Sept. 21, 1779.

The deed of retrocession of the *dominium utile*, executed by the respondent of equal date with the last mentioned liferent dispositions, proceeded on the narrative of the conveyance of the feu of the property having been made to him in trust, and therefore reconveyed the same to the Doctor, in the precise terms, and under the same destination with that contained in the disposition of the superiority by the Doctor, to himself in liferent, and his two sons successively, *and their heirs and assignees in fee.*

In regard to Mrs Hunter's estate of *Newton*, the different deeds were made out in precisely similar terms, the reconveyance by the respondent Riddell, being "to and in favour "of Mrs Margaret Edgar *alias* Hunter, spouse of William "Hunter, Esq. of Linthill, physician, and to him, the said "William Hunter, and longest liver of them two, in con-"junct liferent, and to Edgar Hunter, their eldest son, *his* "*heirs and assignees*; whom failing, to William Hunter, their "second son, his heirs and assignees, heritably and irredeem-"ably in fee." Reserving full power to Mrs Hunter to dispose of her estate at pleasure, as if she had the "absolute fee "and property of this land." Upon this reconveyance infeftment followed.

These deeds, the respondent stated, were intended to accomplish, and did accomplish, not merely the political end of making votes, but the special purpose of changing the previous and original destination, and a perfect settlement of the estate of Newton at sametime.

The second son, and likewise the two daughters, survived

their father, the Doctor, who died in January 1781, but they pre-deceased Mrs Hunter, who lived till May 1792; and the eldest son survived both father and mother.

The respondent had been, while the children were under age, appointed tutor-at-law to them.

The charter expede by Mrs Hunter in 1779 had never been feudally completed *quoad* the fee, but only *quoad* the liferent.

The eldest son had thus a right to the superiority, and also a right to the *dominium utile*. He had gone into the army, and from him the respondent held two commissions, one for selling some detached parts of Linthill; the other for the general management of his affairs. In virtue of this last, in 1795, he expede a general service of Colonel Edgar Hunter, which had the effect of carrying the unexecuted precept in the charter, 1779.

After the death of the Colonel, (Mrs Hunter's eldest son,) the respondent was Dr Hunter's heir-at-law, and expeding a general service, he completed a title, and entered into possession of the estates both of Linthill and Newton.

The Rev. John Edgar is the grandnephew and heir of line of Richard Edgar, and having granted a disposition of the lands to the appellant, Mr Molle, who charged him to enter heir-of-line and provision to Mrs Hunter, and of provision to Colonel Hunter, thereupon obtained a decree of adjudication in implement against him. Whereupon the appellant raised the present action of declarator and reduction, concluding *alternately*, that it should be found and declared, that the destination of the estate of Newton contained in Richard Edgar's settlement in 1766 was not altered by any of the deeds executed by his daughter, Mrs Hunter, and consequently that Mr Edgar, the grantor of the trust-disposition to Mr Molle was entitled to the estate as heir of that destination; or if the deeds executed by Mrs Hunter, did import an alteration of her father's settlement, that they ought to be reduced or set aside by the Court, 1st, Because they were *ultra vires* of Mrs Hunter who had only a liferent to the lands. 2d, Granting Mrs Hunter's power to alter the order of succession, yet the destination in the reconveyance of the fee right, was inserted by the defender (respondent) without her authority; and 3d, Because the service of Colonel Hunter, as heir to his mother, was unwarrantably expede by the respondent.

The defences to this action were, 1st, That Mrs Hunter and her son, not having possessed the estate of Newton under the deed made by her father in 1766, but she having taken

1816.

MOLLE
v.
RIDDELL.

and made up title to it by a service as heir-at-law, and being thereupon infeft, and that being the radical title under which the estate was possessed for more than forty years before the present action was brought, the settlement, 1766, was cut off by the negative prescription, and an unlimited title established by the positive. 2d, That independent of prescription, and whether Mrs Hunter's title was to be ascribed to her father's deed, 1766, or to her service and infeftment, or to both, she was unlimited fiar of the estate, and had, as such, granted the deeds in 1779, which vested the superiority, or *dominium directum* of the estate in her, and her assignees simply, and the property or *dominium utile* in her, in liferent, but with all the reserved powers of a fiar; and in her son, the late Colonel Hunter, and his heirs and assignees in fee. That, as to the superiority, though, no doubt, if she had survived her son, or if she had died without making up a title, that superiority would have gone to her own right heirs as *in hæreditate* of her. Yet as the son survived her, and made up a complete title by his service as heir to her, the estate was no longer *hers* but *his*, and descended from him, not to those connected with him through the mother, but to his heirs *exparte paterna*, that is, to the respondent. And as to the property, or *dominium utile*, as she never exercised the reserved powers, her right was a mere liferent, and the fee was vested in her son, descendible by the terms of the investiture to his heirs; that is again (as he left no nearer heir, and made no settlement) to the respondent. And, 3dly, That the destination of the estate in the reconveyance of the feu right, was, in fact, inserted by the direction and authority of Mrs Hunter, and so must be held *presumptione juris*, nor would any proof to the contrary be now admitted as competent; and as to the service of Colonel Hunter, being expede without authority, the general commission the respondent held from him to manage his affairs while abroad, was a sufficient and good authority to authorize the agent to serve him heir.

Jan. 16, 1810.

The Lord Ordinary, Meadowbank, pronounced this interlocutor: "Having considered the representation for the pursuer, with these answers and the former proceedings, finds "that by the title made up under the former investiture, in "favour of Mrs Hunter, in 1767, the destination by the "settlement, 1766, was not altered; but finds that the new "investiture, 1779, accomplished by resignation and a new "charter in favour of heirs and assignees generally, and "transmitted to Richard Edgar Hunter, by general service

"to his mother, Mrs Hunter, is sufficient to supersede the "destination 1766, and agreeably to the brocard *Hæres hære-* "*dis mei est hæres meus*, to render the heir of line of Richard "Edgar Hunter, the heir of the investiture 1779. Of new, "finds it is sufficiently established that the said service by "Richard Edgar Hunter to his mother was authorized by "him, and that by his death without issue, the defender is "called to the succession by the investiture 1779, and *quoad* "*ultra*, adheres to the interlocutor represented against, and "refuses the representation."

On reclaiming petition the Court adhered.* On second reclaiming petition the Court adhered. Jan. 18, 1811. Dec. 13, 1811.

Pleaded for the Appellants.—1. Mrs Hunter had no power to alter the destination contained in her father's settlement, of date 15th Dec. 1766. The destination in the settlement 1766 was to and in favour of Margaret Edgar, "my "only daughter, and only child, now spouse to Dr William "Hunter of Linthill, *in liferent*, and to the heirs male to be "procreated of her body, by the present or any subsequent "marriage; whom failing, to the heirs male of her body in "fee; whom failing, to my own nearest heirs whatsomever, "also in fee, heritably and irredeemably."

Upon this destination it may be observed, 1st, That *ex figura verborum*, it conveys only the liferent to Mrs Hunter. 2d, It is an intricate tailzie, containing several very remarkable deviations from the ordinary course of succession. The first substitution is in favour of the heirs male to be procreated of Mrs Hunter's body, by the present or any subsequent marriage. If she had had issue of a *former* marriage, they would not have succeeded under this substitution, in which case, her *heirs-at-law* would have been excluded. The next substitution is in favour of the heirs female of her body, by which, if her sons by a second marriage had succeeded, their female issue, or sisters-german, might have been postponed to the daughters of Mrs Hunter's sons, by a first marriage, or to her own daughters by a first marriage. 3d, The last substitution is in favour of the grantor's own *nearest heirs* whatsomever, not the nearest heirs whatsomever of Mrs Hunter.

The question is, Whether Mrs Hunter, who succeeded under this settlement, had powers to alter gratuitously? That she had it in her power to sell or burden the estate

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* *Vide* Opinions of Judges in the Faculty Collection, vol. xvi., p. 429.

1816.

MOLLE
v.
RIDDELL.

with onerous debts, may perhaps, be admitted. But the present is a very different question.

It is, no doubt, established by authorities and decisions, that rights taken to a father in liferent, and his children *nascituris*, in fee, import an absolute fee in the father, in a question with creditors and purchasers. This was the decision in the case of the children of Frog, Nov. 25, 1735, after a full argument.

Frog's Creditors *v.* Frog's Children, Mor. p. 4262.

Lawyers are divided with regard to the principle on which this doctrine has been introduced into the law of Scotland, a doctrine giving rise to the singular anomaly that the word liferent should, in certain cases, become synonymous with fee, to which, in technical language, it is opposed. The common opinion is, that it has been derived from the feudal maxim, *dominium non potest esse in pendente*, because, until the children were born to whom the fee was destined, there seemed to be no person but the liferenter, in whom the property could vest.

But, although it was decided in the case of Frog, and was previously understood to be law, that a right granted to a father in liferent, and to children *nascituris* in fee, vested a real fee in the father; this legal subtlety was not allowed to disappoint the will of the maker of the deed, where he expressly declared that the father's interest should be restricted to a liferent use without the power of disposal, or of subjecting the property to his debts. Therefore, in the case of Newlands against the creditors of Newlands, in which an estate was conveyed to John Newlands "during all the days of his "lifetime, for his liferent use *allenarly*, and to the heirs law-"fully to be procreated of his body, in fee," it was found that the father's creditors could not attach the estate, the word *allenarly* clearly indicating that the right in the father should be restricted to a naked liferent. The feudal difficulty in that case was got over, by supposing a fiduciary fee to be vested in the father for behoof of his children. The report bears that "a majority of the Court were of opinion, that, in "the present case, it is to be held *fictione juris*, that a fiduciary "fee was vested in Lieut. Newlands, but which substantially "is no more than a liferent, as it excludes the power of dis-"posal, either onerously or gratuitously." There are two cases, therefore, finally settled. If the grant is to the father in liferent, and to the children *nascituris* in fee, and if there is no express intention that the father shall be limited to a liferent use, then, in a question with creditors and purchasers,

he is an absolute proprietor, because there can be no restraints upon property by implication, when the interest of creditors and purchasers is involved. On the other hand, if there is an express declaration that the father shall be limited to a liferent, as, for example, if the grant is to the father in liferent *only*, and to the children in fee, then the feudal maxim is got the better of by the fiction of a fiduciary fee, and the estate is not affectable by the father's deeds, even in questions with creditors or purchasers.

2. But granting Mrs Hunter had power to alter the destination in her father's settlement, the deeds which she executed were not effectual to accomplish that alteration with regard to the *dominium directum*, or superiority of the estate. The Court of Session were unanimously of opinion that Mrs Hunter's service as heir of line to her father, did not alter the destination either of the property or superiority. But it is contended, that the charter passed in 1779, in order to separate the property from the superiority, and to confer a freehold qualification on the respondent, had the effect of altering the destination of the superiority, because the superiority is conveyed by that charter to Mrs Hunter's heirs and assignees. In support of this proposition, the respondent relied upon the authority of Stair and Bankton. Stair has said, "Tailzies also being constitute, are broken or changed "by the consent of the superior accepting resignation in "favour of other heirs, whether the resigner resign in favour "of himself, or his heirs whatsomever, or in favour of any "other, and their heirs." And the same doctrine is repeated by Bankton.

Stair, B. ii., tit. 3, p. 229.

B. ii., tit. 3, p. 583.

If Mrs Hunter had resigned in favour of heirs expressly different from the heirs in her father's destination, it might be admitted that, abstractedly from the special circumstances of this case, to be afterwards considered, the destination would thereby have been altered. But the first question is, whether by a resignation to heirs and assignees whatsoever, Mrs Hunter intended heirs and assignees different from those contained in her father's settlement.

The term "heirs whatsoever," often denotes heirs general, or heirs of line, but this is by no means its exclusive signification; nay, this is not its *technical* signification. So Lord Stair has laid it down. The term "heirs whatsoever," therefore, is the generic appellation, comprehending every species of heirs; and it may denote any one species by the addition of the differential sign, either expressed in words, or

Stair, B. iii., tit. 5, § 12.

1816.

MOLLE
v.
RIDDELL.

implied from facts and circumstances. Accordingly, the flexibility of this term has been insisted on by all our authors.

3. But, granting that the destination was altered with regard to the *dominium directum*, or superiority of the estate, and that this superiority must descend in terms of the charter 1779, to the heirs whatsoever of Mrs Hunter, construing that word in the ordinary sense of heirs of line, the appellant's constituent is the heir of that new destination, because the right under it was never habilely vested in Colonel Hunter. The respondent expeded a general service in favour of Colonel Hunter, as nearest and lawful heir to his mother. But this step was taken by him without any authority from the Colonel, unwarrantably and illegally, for the purpose of carrying into effect his own improper schemes. It therefore follows that Colonel Hunter must be held to have died in apparency, and Mr Edgar, the grantor of the trust bond, as Mrs Hunter's heir general, must succeed.

4. The Reverend John Edgar, the appellant's constituent, is heir under the reconveyance executed by the respondent of the *dominium utile*, or property of the estate.

5. The reconveyance executed by the respondent upon the 21st of September 1779 was framed in direct violation of his duty as trustee, unwarranted by the previous authority, and unsanctioned by the subsequent acquiescence of Mrs Hunter. Whether that lady had power to alter the destination in her father's settlement, and whether the deeds which she signed were calculated to effect that alteration, the respondent is bound by his own conduct from taking advantage of the new destination.

6. The respondent objected to the admissibility of parole testimony to cut down a written deed; but that was not the nature of the case here. The question was, whether the deed of reconveyance is the deed of Mrs Hunter or not, and whether she ever authorized its execution at all? Or whether, on the other hand, it was not unwarrantably palmed upon her for something totally different from what she understood it to be, or that the particular destination was wrongfully introduced? In such cases parole is perfectly competent.

Pleaded for the Respondent.—The respondent maintained, 1st, That the deed of 1766, independent of the objection of fraud to that deed, was lost by the negative prescription, and a contrary title established by the positive. 2dly, That Mrs Hunter being in the construction of law fiar, had complete power to alter the destination of that deed, and did so by the

operations in 1779; and, 3dly, That the appellant's attempt to contradict the deeds, as the act of Mrs Hunter, by parole evidence, is incompetent, and nothing relevant has been condescended on.

1. As to the plea of prescription, if it could be supposed that, by the deed, 13th December 1756, Mrs Hunter's hands were tied up in the manner contended for by the appellant, the obligation or *jus crediti* thence arising, would now be lost or extinguished by prescription, both positive and negative. Mr Richard Edgar died on the 18th of March 1767; and his daughter, Mrs Hunter, rejecting the settlement which he had made up, proceeded immediately after his death to make up her titles, not under that deed, but by a special service upon the preceding investiture. This she did on the 30th of April 1767, and it was completed by infeftment on the 4th of June of that year. Now the present action at the appellant's instance was not raised till the end of the year 1807, *i.e.*, forty years and eight months after the date of the special retour, and forty years and six months after the date of the infeftment. The respondent does, of course, maintain that even the positive prescription, counting from the date of Mrs Hunter's infeftment in June 1767, had elapsed before any effectual interruption was made by the appellant or his constituent. But supposing no *positive* prescription to have taken place, the obligation on Mrs Hunter to fulfil her father's deed, was lost by the negative prescription.

2. Independent of prescription, Mrs Hunter was absolute fiar of the estate under her father's deed, and she altered the destination by the deeds executed in 1779, in a way that has had the effect to carry the estate to the heirs-at-law of her son, though these are not her own heirs. It is a rule, as firmly established as any one can be, in the law of Scotland, that a fee of real estate cannot be *in pendente*, and therefore cannot vest in *heirs* who only take by service, where the succession opens to them. Where lands, therefore, are conveyed to one *in liferent*, and the heirs of his body, or heirs of any kind in fee, the nominal liferent is a real fee, or what, in the civil law, is called *usus fructus casualis*, for as the fee cannot be in heirs till they exist and are served, it must either remain with the grantor or pass to the grantee; that is, the person who, *ex figura verborum*, is liferenter. The former would be against the intention of the deed, but the latter is a most reasonable mode of settling the difficulty. Vested in fee, therefore, of the estate, it was quite competent

1816.

MOLLE
v.
RIDDELL.

Vide ante, vol. ii. p. 449.
April 2, 1778.

for her to alter the destination in her father's settlement, and which she has competently, and in a fit manner, done, by the deeds of 1779.

To say that "heirs and assignees" in the termination of this deed of reconveyance, may refer to the heirs called by Richard Edgar's deed in 1766, is out of the question, and directly in the face of what was laid down in the noted case of Douglas, very similar to the present.

3. As to the charge or allegation, that the words of the deeds executed in 1779, which have had the effect to carry the estate to the respondent, were inserted by him without instructions from Mrs Hunter, and contrary to her intention, and the desire to be let into parole evidence to establish this, it is sufficient to say, that the respondent did everything by instructions from Mrs Hunter, assisted by her husband, though he cannot prove it, because the instructions were verbal, and still less can the contrary be proved. He need not dwell on the incompetency to change the legal import of a deed formally executed by parole evidence, or the danger of admitting it; as Lord Meadowbank, the Lord Ordinary, said in his note, "It would shake the title deeds of landed property to give "any countenance to the plea, that conveyancers, having a "contingent interest in settlements, were bound, on pain of "nullity, to produce separate authorities for the terms of the "deeds of their clients." It cannot be thought necessary to say more on this head than this.

4. As to the allegation that the respondent caused Colonel Hunter to be served heir to his mother, which completed his title to the superiority without his authority, this is totally unfounded. The respondent held a most explicit mandate, produced in the course of the service, and again produced in the present cause, for the step so taken.

After hearing counsel,

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

For the Appellant, *Sir Saml. Romilly, Geo. Cranstoun.*

For the Respondent, *Wm. Adam, W. Boswell.*

NOTE OF AUTHORITIES.

Appellant's Authorities.—No power to alter destination, Waddell *v.* Waddell, 6th January 1739; Mor. p. 8965. Moffat *v.* Moffat, 6th February 1724; Mor. p. 4321. Maclellan and Watson *v.* Meek,

2d and 3d November 1743; Mor. p. 4396. Lord Strathnaver *v.* Douglas, 2d February 1728; Mor. p. 15373; House of Lords affirmed, (*vide ante*, vol. i. p. 32). Urie *v.* Earl of Crawford, 17th July 1756; Fac. Coll. Lockhart *v.* Gilmour, 25th November 1755; Mor. p. 15404. Henderson *v.* Henderson, 20th January 1790; Fac. Coll. vol. ii. p. 185, *et* Mor. p. 4215. Elphinstone *v.* Elphinstone, 3d March 1803; Fac. Coll. vol. 18 (This reference doubtful). Gordon *v.* Maitland, 1st December 1757; Fac. Coll. vol. ii. p. 101, *et* Mor. p. 11161. Affirmed on appeal, (*vide* Paton's Appeal Cases, vol ii. p. 43). Lord Cathcart *v.* Shaw, 31st January 1755; Mor. p. 15558. Deeds executed not effectual to alter destination. Marquis of Clydesdale *v.* The Earl of Dundonald, 26th January 1726; Mor. p. 1262–75. House of Lords, Robertson's Appeal Cases, p. Skene *v.* Skene, 31st July 1725; Mor. p. 11354. Weir *v.* Steel, 7th February 1745; Mor. p. 11359. Burnett *v.* Burnett, 28th July 1765; Mor. p. 14939. Douglas *v.* Duke of Hamilton, 9th December 1762; Mor. p. 4358. Affirmed on appeal with variation, (Paton's Appeal Cases, vol. ii. p. 449). Rose *v.* Rose, 20th March 1784; Mor. 14955, *et* M. 5229. Reversed in the House of Lords; (Paton's Appeal Cases, vol. iii. p. 66). Blane *v.* Earl of Cassillis, 16th December 1802; Mor. p. 14447; (Paton's Appeal Cases, vol. v. p. 1. *et* p. 307). Parole inadmissible to affect writing. Wilson, 30th November 1744; Elchies, Fraud, No. 14. Moses *v.* Craig M'Lintock, 4th February 1773; Mor. 12352. Duke of Hamilton, &c., *v.* Douglas; House of Lords, March 1779; (Paton's Appeal Cases, vol. ii. p. 449).

Respondent's Authorities.—Liferent or fee. Maclellan *v.* Meek, 2d and 30th November 1742; Mor. 4396. Newlands *v.* Newlands, Creditors, 26th April 1798; (Paton's Appeals, vol. iv. p. 43). Lillie *v.* Riddle, 24th February 1741; Elchies, "Fiar," No. 7, *et* M. 4267.

[Dow., Vol. iv. p. 269.]

ARCHIBALD DOUGLAS, JAMES BLACK, LAURENCE CRAIGIE, and Others, Underwriters of the ship North Star, ... } *Appellants;*

RICHARD SCOUGALL and Co., Merchants, Leith, ... *Respondents.*

House of Lords, 17th May 1816.

INSURANCE—UNSEAWORTHINESS.—In effecting an insurance on a ship and freight, Held in the Court of Session that it was proved that the ship, on sailing on the voyage assured, was seaworthy. Reversed in the House of Lords.

An action was raised by the respondents, owners of the