

1820.

GEDDES
v.
WALLACE, &C.
Vide Journals
of the House
of Lords.

of the loss, as a partner. In the House of Lords this was reversed, holding, "That the appellant ought not to be considered *as between him and his partners*, as a partner liable "to any share of the loss."

For the Appellant, *Robt. Forsyth, Fra. Horner.*

For the Respondents, *R. Gifford, John Cunninghame.*

1820.

THE DUKE OF
HAMILTON,
&C.
v.
ESTEN,
&C.

[2 Bligh, p. 197.]

His Grace the DUKE OF HAMILTON, and
MARQUIS OF DOUGLAS, his Commissioner, *Appellants;*
MRS ESTEN, now Wife of SCOTT WARING,
and him for his interest, *Respondents.*

House of Lords, 24th July 1820.

ENTAIL—POWER OF LEASING—EXERCISE OF THAT POWER—
HOMOLOGATION—TURPE PACTUM.

Leases were granted by the late Duke of thirty or forty of his farms, at a rent less than two-thirds of their value at the time, and less than one-third of their present value, to John Boyes, the Duke's own confidential factor, who sub-let them, deriving a yearly surplus, or increase of rent, of £1376. These leases were let for the period of twenty-one years. The entail contained a prohibition against *alienating*. It permitted leases, but not to exceed twenty-one years' duration, and they were not to be let "*with evident diminution of the rental.*" Accordingly, it was stated, the above was a device formed to hurt the succeeding heirs of entail, and to benefit the respondent, who had lived with the Duke, and had begot him a daughter. An obligation under the hand of Mr Boyes was adduced, stating that it was agreed between the Duke and him, that he should hold whatever increase of rent he might derive from the sub-letting, or assigning, these leases, in trust for behoof of the said Mrs Esten, and her daughter, Ann Douglas Hamilton, and any other child or children that may be procreated between the said Duke and her, "and she has further reposed in me the trust and charge of collecting the surplus money "rents." After the Duke's death, in 1799, the present Duke, ignorant of his rights, acquiesced in Boyes so appro-

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priating these rents, until his death, in 1812, when actions were brought by the respondent which induced the appellants to bring a reduction of the leases in question. This was done on two grounds, 1st, That the cause of granting these was illegal, namely, to induce Mrs Esten to live with the late Duke. 2d, That by the entail under which he enjoyed the estate, leases "with evident diminution of the rent were prohibited." The Court of Session decided the case on the first ground entirely, considering that the appellants had no case on the second ground, and decided, that, in so far as regarded the daughter, the leases were unexceptionable, and in reference to Mrs Esten, her mother, it did not appear that they were granted with the view of her entering into, or continuing in, an improper course of life, but as compensation for injury and loss incurred.

Against these interlocutors the present appeal was brought.

After hearing counsel,

The Lords find, that the leases in question were not warranted by the power contained in the deed of entail, and therefore subject to reduction, unless the same were homologated by the late appellant, Archibald, Duke of Hamilton, deceased, and by the appellant, Alexander, now Duke of Hamilton; and so far as the same were not so homologated, respectively, it is ordered and adjudged, that the interlocutors complained of be reversed; and it is further ordered that the cause be remitted back to the Court of Session, to review the same, subject to the above finding.

For the Appellants, *John Clerk, W. Hamilton.*

For the Respondents, *Alex. Maconochie, Sir Saml. Romilly,
J. Blackwell.*

[Before the Lords' Committee of Privileges.]

1821.

Petition and Case of JOHN BOWES, an infant, claiming the titles, honours, and dignities of Earl of Strathmore and Kinghorn, Viscount Lyon, Lord Glamis, &c.; and

STRATHMORE
PEERAGE
CAUSE.

Counter Petition and Claim for THOMAS BOWES, brother to the late Earl (tenth Earl) of Strathmore, claiming the same titles, honours, and dignities.