April 5. 1821.

'on a vessel to sail on the 1st of May, was perfectly different from 'one on a vessel which sailed on the 23d of April, inasmuch as 'the defenders undertook a risk on a vessel understood to be in 'the harbour and safe on the 1st of May, when, in fact, she had 'been eight days at sea.' He accompanied this interlocutor with a note, in which he observed, that 'the petitioners (D. B. and Co.) 'do not seem to dispute, that if the vessel had been taken before 'the 1st of May, they would have had no argument. They, 'however, state that the vessel was not captured till the 11th of 'May. This, in real reasoning, makes no difference, since it is 'a thousand chances to one, that if she had not sailed till the 1st 'of May, she would not have fallen in with the vessel which took 'her. The case of a vessel sailing the day before she is repre-'sented to sail, is quite different from that of a ship being de-'tained by unavoidable accidents beyond that day. In fact, it 'is an insurance on a vessel in jeopardy, when she is represented 'to be comparatively safe.' Dennistoun, Buchanan, and Company having brought these judgments under review of the Court of Session by reduction, Lord Pitmilly repelled the reasons, and assoilzied Lillie and others; and to this interlocutor the Court adhered on the 21st of May 1816, and 22d May 1817.*

Dennistoun, Buchanan, and Company then appealed; but the House of Lords 'Ordered and adjudged that the appeal be 'dismissed, and the interlocutors complained of affirmed.'

Appellants' Authorities.—Park, 321. 322; Marshall, 342; Park, 203, 205.

J. CAMPBELL,—C. BERRY,—Solicitors.

(*Ap. Ca. No.* 16.)

No. 8.

Dr. JAMES R. BARCLAY, Appellant.—*Moncreiff—Keay.*
Right Hon. W. ADAM, Respondent.—*Clerk—Irvine—Cranstoun.*

Tailzie.—Held (affirming the judgment of the Court of Session,) that an entail, which inter alia prohibited sales, and thereafter all facts and deeds, civil or criminal, whereby the lands might be evicted, but in which the irritant clause mentioned only facts and deeds, without specifying sales or alienations, did not prevent the heir of entail in possession from selling.

May 18. 1821.

1st DIVISION. Lord Gillies.

ON the 11th of December 1804, the respondent executed an entail of the estate of Blair-Adam, in terms of a deed of entail made in 1758 by Alexander Littlejohn, and in pursuance of a statute of the 43d Geo. III. By the prohibitory clause it was

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* Not reported.

declared, that 'it shall be noways lawful to the granter and heirs 'of entail to sell, alienate, or put away the lands and others fore-'said, or any part or portion thereof, nor to alter the course of 'succession above established, nor to contract debts above £500 'sterling at any one time, nor to do or commit any fact or deed, 'civil or criminal, whereby the said lands and estate, or any part 'thereof, may be any ways adjudged, evicted, or forfeited from 'me or them, or may be any ways affected, in prejudice and de-'fraud of the subsequent heirs of tailzie and provision succes-'sively, according to the order of substitution above specified; 'neither shall it be lawful for me or them to permit the said 'estate, or any part thereof, to be adjudged or affected for any 'debts or deeds contracted or committed by me or them before 'our succession, or by any of our predecessors whom I or they 'may any way represent, or to which, as their representatives, 'may be liable or subject to.' Then follows the irritant clause, in these terms: 'All which debts, deeds, and contrac-'tions, are hereby declared void and null, by way of exception 'or reply, and without declarator, in so far as they may burden 'the said lands and estate.' After this irritant clause, the pro-hibitive one is resumed in the following terms: 'Neither shall it 'be lawful for me or the said heirs of tailzie to permit the said 'lands and estate, or any part thereof, to be evicted, adjudged, 'or affected for any debts or deeds contracted or done by the 'said deceased Andrew Littlejohn, or for the said sum of £500 'sterling, wherewith the heirs of tailzie are empowered to burden 'the lands and estate at one time.' A resolutive clause then im-mediately follows, which is thus expressed: 'And if I or the 'heir in possession shall not redeem any adjudication that may 'be led against the said estate for and upon the debts and deeds 'of the said deceased Alexander Littlejohn, or for the said sum 'of £500 sterling, within three years of the expiry of the legal 'of such adjudications, then and in that case I or such heir shall, 'for himself only, lose and forfeit his right to the said lands 'and estate; and it shall be lawful to the next immediate heir 'of tailzie, and, if he shall neglect, to the next succeeding heir, 'and so on successively, to redeem the said adjudication, and use 'all the forms necessary in the order of redemption, and to enjoy 'and possess the said estate irredeemably thereafter, free of the 'debts and deeds of the preceding heir.' The entail afterwards contained a more comprehensive resolutive clause, which was in every respect applicable to alienations and the other acts spe-cified in the prohibitory clause. In 1820, Dr. Barclay purchased from the respondent part of the estate at a price of upwards of

May 18. 1821.

May 18. 1821. £3000; but, being doubtful of the respondent's power to convey, he brought a suspension as of a threatened charge, on the ground that the respondent was, by the terms of the entail, effectually prohibited from selling any part of the estate. In support of this plea, he contended that as the entail, after prohibiting the heirs from doing certain deeds by which the right of the substitutes might be disappointed, contains an irritant clause, declaring in general terms that all these debts, 'deeds,' and contractions should be null and void, it was clear that all the particular acts previously specified (including that of selling) were comprehended under this sweeping declaration, and that there was no reason for denying effect to the general expression 'deeds,' because it was accompanied by other words of a more precise and limited import. To this it was answered, That although there was no doubt a prohibition against selling, yet the irritant clause was not a general one applicable to all the prohibitions, but was exclusively directed against those debts and deeds specified in the particular branch of the prohibitory clause immediately preceding it; that in this branch the heirs were prohibited 'to do or commit 'any fact or deed, civil or criminal, whereby the said lands and 'estate, or any part thereof, may be any ways adjudged, evicted, 'or forfeited;' and the irritant clause merely bears, that 'all which 'debts, deeds, and contractions are hereby declared void and 'null;' so that the term 'deed' here introduced referred to feudal delinquencies, and not to sales. The Court, on the 8th of February 1821, on the report of Lord Gillies, found the letters orderly proceeded, in respect 'that the deed of entail founded on 'by the suspender does not contain any irritant clause applicable 'to sales or alienations of the lands in the said tailzie.'* Dr. Barclay having appealed on the same grounds, the House of Lords 'Ordered and adjudged that the appeal be dismissed, and the 'interlocutor complained of affirmed.'

Respondent's Authorities. — Stewart, July 8. 1789, (15535); Brown, June 25. 1808, (No. 19. Ap. Tailzie.)

Appellant's Authorities.—Roxburghe entail; Tillicoultry entail.

J. CAMPBELL,—J. RICHARDSON,—Solicitors.

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* Not reported.