

stand, and particularly who is or are now' entitled to receive the dividends thereon, if any future dividends of those estates should be made? My Lords, having the result of these inquiries, if a satisfactory result, we shall be able, probably, to give a more satisfactory judgment; if not a satisfactory result, I will then take the liberty to propose to your Lordships such a judgment as, under the circumstances under which we may be placed, may best meet the case. The question is certainly an extremely important one, as affecting co-sureties in Scotland, and I should hope, therefore, your Lordships will not think it improper that I should ask for answers to these inquiries before we proceed to judgment. I had better, perhaps, adjourn it to Friday, or to this day week."

1821.
STIRLING, &c.
v.
FORRESTER.

SIR JAMES MONTGOMERY, Bart., and Others, *Appellants* ;

1821.

WALTER FRANCIS, DUKE OF BUCCLEUCH
AND QUEENSBERRY, and Others, .

Respondents.

MONTGOMERY,
&c.

v.

THE DUKE OF
BUCCLEUCH,
&c. ;

AND

JOHN HYSLOP,

Appellant ;

AND
HYSLOP

v.

WALTER FRANCIS, DUKE OF BUCCLEUCH
AND QUEENSBERRY, and Others, .

Respondents.

THE DUKE OF
BUCCLEUCH,
&c.

House of Lords, 29th June 1821.

ENTAIL—LEASE—PURGATION OF IRRITANCY.

These appeals had reference to the Queensberry leases which in the former appeals (*vide ante*, p. 520 et 540) were found to be beyond the powers of the heir of entail. On the case going back to the Court of Session, the executors contended that, supposing the leases to be a contravention of the entail, yet it was competent for them and the tenants to purge the irritancy, but the Court, 25th February and 6th July 1820, refused purgation of the irritancy; stating that as the Duke was now dead, no contravention or forfeiture could be declared against him. *Vide Shaw's Appeal Cases*, Vol. i., p. 59.

The LORD CHANCELLOR (ELDON) said,

"My Lords,*

"In these two causes, on account of the many interests involved

* From Mr Gurney's short-hand notes.

1821.

MONTGOMERY,
&C.
v.
THE DUKE OF
BUCCLEUCH,
&C.;
AND
HYSLOP
v.
THE DUKE OF
BUCCLEUCH,
&C.

in them, and the magnitude of the questions in point of value, it was necessary to consider them very maturely, and it has till now been quite impossible to give that full consideration which was proper.

“The substance of the question under these two appeals is, that the Court of Session has denied the application of the doctrine of purgation to the leases in dispute.

“Where a reversal of a judgment is moved in this house, it has been usual to state the grounds upon which such reversal is proposed to be made; but where an affirmance is moved, it has not generally been the practice to state the reasons for such affirmance.

“After a most painful and anxious attention to the printed papers in these causes, to the arguments at the bar, which were most able and ingenious, and to all that could be urged in any way, and after having carefully looked at all the authorities referred to, having looked back to the summons, and recollecting what passed formerly in these cases in your Lordships’ House, with every feeling for the parties interested, I cannot refrain from stating that I do not see cause to reverse the interlocutor pronounced by the Court of Session.”

LORD REDESDALE.—“My Lords, I am under great difficulty to conceive how the questions which have been raised in these cases could be raised. I have looked carefully into all the papers, but I cannot see any sufficient grounds to alter the decision of the Court of Session.”

(Judgment of affirmance would then have been given, but there were not Peers enough to make a House without Lord Montague, who was a party. The Lords, therefore, adjourned moving the judgment till Monday).

1822.

THE DUKE OF
ROXBURGHE
v.
KER.

The DUKE OF ROXBURGHE, . . . *Appellant*;
Lieut.-General KER, . . . *Respondent*.

House of Lords, 3d, 17th and 24th May 1822.

BASTARDY—SASINE—RES JUDICATA—PROOF OF ILLEGITIMACY—
MARRIAGE OF ADULTERER WITH ADULTERESS.

In this case several important questions occurred, as, 1st, Whether an action which was, at the request of the pursuer, sought to be withdrawn after defences were lodged, and the Court, of consent, allowed him to withdraw it, and at sametime *assoilzied* the defender, was to be held a *res judicata* in the new action brought? 2d, Whether, where a predecessor