DUKE OF QUEENSBERRY'S TRUSTEES, Appellants.—*Murray*—*Abercrombie.* No. 23.

MARQUIS OF QUEENSBERRY, Respondent.—*Brougham*—*Keay*—*Sandford.*

Tailzie.—Reparation.—The Court of Session having held that an action concluding for damages at the instance of an heir of entail in possession, was competent against the executors of the preceding heir, who possessed under an unrecorded entail in favour of a series of substitutes, containing prohibitive, irritant, and resolutive clauses; and who was alleged to have violated the prohibition as to the letting of the lands; and the penalty of the entail being the heir's forfeiture, and nullity of the act itself, and not pecuniary damages; the House of Lords remitted for the opinion of both Divisions.

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1ST DIVISION. Lord Meadowbank.

By the Tinwald entail, executed in 1769, by Charles Duke of Queensberry, in favour of a series of substitutes, it is provided, 'that it should not be lawful to any of the said heirs to set tacks 'or rentals of the said lands, or any part thereof, for any longer 'space than 19 years, and without any diminution of the rental, 'or for the setter's lifetime, in case of any diminution of the 'rental; and that it shall not be lawful to any of the said heirs to 'take grassum for any tack or rental to be set by them, but to set 'the said lands and estate at such reasonable rents as can be got 'therefor, so that the succeeding heirs may not be hurt or pre-'judged by the heir in possession setting the lands at an under 'value, or taking by way of grassum what falls annually to be 'paid out of the produce of the lands.'

The consequences of contravention are declared to be, that any of the heirs contravening 'shall for himself or herself only 'ipso facto amit, lose, and forfeit all right, title, or interest 'which they respectively have, or shall have, to our said lands 'and estate; and the same shall become void and extinct, and 'the lands and estate shall devolve, accrue, and belong to the 'next heir of tailzie appointed to succeed, in the same manner 'as if the contravener was naturally dead;' that the lands and estate should not be burdened with the acts and deeds of contravention, which it is declared should have no force, strength, or effect against the other heirs of entail; that both the estate and heirs should be as free therefrom, as if the deeds of contravention had never been done or happened; and that it should be lawful to the heir having a title through the contravention of a former heir, to establish in his or her person the right and title to the said estate, without being subjected to the deeds of the party contra-

May 22, 1826. vening. Although there was a power given to record the entail, there was no injunction to that effect.

On the death of Duke Charles the entailer, he was succeeded by William Duke of Queensberry, who made up titles to the estate under the entail, but he did not record it. During the period of his possession, he obtained renunciations of several of the current leases, and granted new ones; and on his death the Marquis of Queensberry, who succeeded him, being advised that a reduction of these new leases was not competent, as the entail had not been recorded, raised an action of damages against the Duke's trustees and executors, on the ground of contravention, by having entered into these transactions with a view to enrich himself, and thereby to injure the succeeding heirs; and that he had done so in a manner contrary to the entail, and in order to defraud the next heir. In defence against this action, it was pleaded as to one class of the leases, that as the period for which the original leases were granted was still current, and as the new leases had been granted on renunciations for rents which were at least the same as in the original leases, the pursuer could not qualify any damage. The Court of Session, on the 23d of February 1815, assoilzied; and on appeal, the House of Lords, on the 26th May 1820, affirmed the interlocutors complained of, 'so 'far as they respect leases granted by William Duke of Queens-'berry on the renunciation of former leases, which, if not sur-'rendered, would have been subsisting leases at the time the 'summons was issued, without prejudice to any action or ac-'tions to be hereafter brought on account of the said leases.' 'And with respect to the rest of the leases to which the interlo-'cutors relate, that the cause be remitted back to the Court of 'Session in Scotland, to review the said interlocutors, with liber-'ty to the appellant to give in an additional condescendence, and 'in such additional condescendence to state such farther facts 'and circumstances as he may be advised to state, with respect to 'each of such last mentioned leases respectively, provided such 'farther facts and circumstances be consistent with the terms of 'the summons, and warranted thereby.'

The effect of this judgment was to assoilzie the trustees and executors from the action of damages as to the leases granted on renunciations of former leases, the period of which was still unexpired, but without prejudice to any other action of damages to be afterwards brought in relation to them. Among this class was the lease of the farm of Old Mains of Tinwald, and on its expiry the Marquis of Queensberry raised an action of damages against the trustees and executors, stating

generally, that while the Duke 'was in possession of the 'estates to which he succeeded under the disposition and deed 'of tailzie aforesaid, he let the whole or most of the farms 'upon the estate, not at such reasonable rents as could have 'been obtained therefor, but, on the contrary, he, with an in- 'tent to defraud the succeeding heir, let them at rents far be- 'low such reasonable rents; and thus the said Marquis, pur- 'suer, had been hurt and prejudiced by the said Duke while 'in possession, his setting the lands at an undervalue;' that in particular, the farm of the Old Mains of Tinwald, which was possessed on a lease of nineteen years, from Whitsunday 1791, at the yearly rent of £140, had been renounced in 1796, and a new lease, for nineteen years, granted from Whitsunday of that year at the same rent; and again in 1799, a new lease had been made, also for 19 years, at a rent of £140, both of which leases were 'in defraud of the said Marquis, pursuer, greatly to his hurt 'and prejudice, and in contravention of the said entail,'—£140 not being such a reasonable rent as could have been got for the farm, which was well worth £550 per annum, and of which the Duke was well aware. May 22, 1826.

Among other defences, the trustees pleaded that the action was incompetent, seeing that the only penalties which the deed of entail annexed to any act of contravention, was the forfeiture of the heir contravening, and the nullity of the act itself; and there was no condition or declaration whatever importing that the representatives of any heir who should possess the estate should be liable in damages to a succeeding heir on account of any alleged act of contravention.

The Lord Ordinary having reported the case on informations, the Court of Session, on the 15th December 1825, found the action competent, repelled the defence, and remitted to the Lord Ordinary to proceed accordingly.*

Lord President.—We have in a manner decided this case already, for it seems to be the case of Ascog over again.†

Lord Hermand.—I have no doubt of the competency of an action of damages against the executors. This was the only course left to the pursuer. If the entail had been quite perfect, I am not prepared to say that such an action would have been competent. But the entail was imperfect from the want of re-

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* See 4 Shaw and Dunlop, No. 228.

† The decision in the case of Ascog is not yet final, a reclaiming petition having been appointed to be answered.

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gistration; and the proper remedy in case of contravention has thus been neglected to be provided.

Lord President.—That is very true. But the heir in possession was just as much to blame for not getting the entail recorded, as any one of the other heirs. The late Duke was quite as much in fault as the Marquis.

Lord Balgray.—In my opinion he was more so; for it was the primary and special duty of the heir in possession to have the entail completed, by putting it on record, upon his first taking possession under the entail. The consequence of the neglect in this case has been, to save the lease, but not to protect the executors from damages. The present action is perfectly competent. But I will go farther, and suppose the entail to have been perfected by recording. Still I have great doubts whether the pursuer might not have had other remedies besides that of irritancy, and particularly whether he might not have had a competent action of damages against the executors, if that had been necessary. And I will not say that one of these remedies would exclude the other; for I think the pursuer might be entitled to them both at one and the same time. The object of the entailer is to preserve his estate; and this he endeavours to accomplish by fettering the heir in the mode of conducting it. He may even restrain him in the ordinary management of the estate, and the restraint will be effectual. The heir must act according to the injunctions of the entail. He is not entitled to reap any advantage to himself at the expense of the other heirs, in any manner which is prohibited by the entail: and if he does so, he is liable to them in damages for the loss, besides forfeiting his right on account of contravention of the entail. He is bound to repair the wrong which he has done to the heirs: he is bound to refund to them the money which he may have pocketed by taxing the rentals. I say therefore, that not only is his right to the estate resolved by the act of contravention, but he is at the same time personally bound to repair the damage, by giving up what truly belongs to the heir of entail. I have no doubt that this personal obligation may be made good against his representatives. The House of Lords were undoubtedly of opinion that such a claim is relevant, else they would not have sent the original action back here. Indeed I think the law of the case perfectly clear. If an heir of entail, in the face of a prohibition, does a great injury to an estate, is he not bound to repair it? Suppose, as in the case of Allan, that he has pulled down the house and sold the materials, no doubt his right would be forfeited, but at the same time would he be entitled to pocket the proceeds, and to

retain them, because the next heir was not entitled to sue for them? Impossible. Or if he had set fire to the house and burned it, would he not have been liable to the next heir in damages as well as have lost his right to the estate, if that had been the penalty of contravention? These consequences would no doubt be dependent upon the nature of the prohibition in the entail. But in the present case the prohibitions of the entail are expressly declared; and if the pursuer can only prove that the alleged injury and violation have been made, I have no doubt that he is entitled to sue the executors for damages, though I suspect he may find it perhaps a difficult matter to prove the facts. The House of Lords, indeed, have decided on the relevancy of the action by their remit; and they appear to have sent back the case only for the purpose of having the facts ascertained. May 22, 1826.

Lord Gillies.—The question here is as to the competency of the action, and we must assume, as the defenders have done in stating their additional defence, that an act of contravention has taken place. I think the decision in the Ascog case must be taken as the rule in this. At the same time, I was one of those who doubted of the correctness of that decision. The present case, indeed, is infinitely stronger in favour of the pursuer. For here there was a perfect entail; and the heir is not entitled to plead upon any imperfection that arose from the want of registration, for then he would be founding on his own wrong. If the Duke had been still living, the pursuer might have brought a declarator of irritancy; but as he is now dead, the only remedy remaining is an action of damages against his executors. I have no doubt as to the competency of the action.

Lord Craigie.—I think the action ought to be sustained. A deed of entail is a sort of contract amongst all the heirs, by which each of the heirs in possession is bound as a bonus paterfamilias to all the rest. Therefore, if the pursuer's allegations be true, as to the views on which the late Duke proceeded in fixing the rents, it is as clear as sunshine that the Duke is as liable to challenge on account of these leases as if he had taken grassums directly. If he accepted of £140 rent when the farm was worth £550, the next heir was injured as a necessary consequence, if the lease did not expire at the time of the Duke's death; and he was therefore entitled to a remedy. The present claim of damages is unquestionably competent.

The trustees appealed.

Appellants.—The entail not having been recorded when the

May 22, 1826. leases were let, the claim for damages cannot be founded on the statute 1685; neither has it support from the irritant and resolutive clauses; and the mere injunction to let at reasonable rents, even if it could operate independently of the irritant and resolutive clauses, cannot be a ground for damages. The statute gives no countenance to the distinction, that although the form it prescribes must be adopted to impose fetters in a question with creditors and third parties, still an effectual obligation can be laid on the heirs themselves, by a simple prohibition. If so, then as a prohibition derives its efficacy from the resolutive and irritant clauses, and these produce their effect by voiding the deeds of contravention, and forfeiting the right of the contravener, an action of damages is incompetent. But even if, independently of statute, the heirs could be fettered, still a simple prohibition, unaccompanied by any declaration by the entailer, of what is to be the consequence of transgression, will not afford a substitute-heir ground for a claim of damages; for it is now established law, that even in questions inter heredes, no implication, however clear, can be admitted, in order to impose restraints on the heir in possession. Nor is there any room for the distinction, that the rule of strict interpretation applies only in ascertaining, whether there is a prohibition or not; and not to the inquiry, what are the consequences of infringing the prohibition? Besides, if a simple prohibition created an effectual obligation on the heirs of entail, it would vest the substitutes with a perfect and complete jus crediti; but this jus crediti, the substitutes do not enjoy; for if it existed, it would be protected by the ordinary remedies of inhibition or interdict, which it is not. At all events, there can be no ground for a claim of damages under an entail constructed in terms of the statute 1685, where the maker of the entail has distinctly specified what are to be the consequences of contravention. If so, the claim cannot arise from the circumstance, that at the date of the leases, the deed was not recorded. Neither does the claim result from any neglect or failure of duty imputable to the Duke; for there exists in the entail no injunction on the heirs to record; but the entail merely puts it in their power to do so.

Respondent.—The appellants' doctrine is founded on the erroneous assumption, that the irritant and resolutive clauses of the entail contain the only penalties annexed by the entailer to the deed of contravention, and that consequently a demand for damages is unwarranted. Nothing is more clearly established in the law of Scotland, than that in questions inter heredes, the obligations created arise not vi statuti, but from the principles

of common law. In such a question, the heir, by acceptance of the estate under the conditions imposed by the disponer, obliges himself to perform these conditions. If the condition amounts to an obligation in favour of a third party, then that third party acquires a jus crediti to enforce implement of the condition. Before the statute 1685, entails containing prohibitions were obligatory on heirs taking under them, and were not rendered less so by the passing of the act. A jus crediti, corresponding to the condition or restriction, is vested in the substitutes, and entitles them to claim reparation of any damage arising from contravention. It is of no importance (the question being inter heredes) that the entail was not recorded; it still remained effective against heirs, and created valid obligations, which they were bound to obey, if they accepted. And this rule is equally applicable to an unrecorded deed of entail perfect in the irritant and resolutive clauses, as it is to an entail where they are imperfect. The penalty stipulated by these clauses is not exclusive of damages resulting from the infringement of the prohibition. The principle that must regulate the present case, was enforced in the case of Stewart of Ascog, 28th June 1825, after a hearing in presence of the whole Court. May 22, 1826.

LORD CHANCELLOR.—It appears there is no former case in which an action of the same nature as this one has been brought. Now as such actions may be brought before the lease has expired, and there may be a succession of heirs during that period, I wish to be informed, whether, if A, B, C, and D, were successive heirs of entail during the currency of the lease, which may be said to have occasioned damage to each of these successive heirs of entail, do you maintain that each of these heirs may bring upon their succession separate actions of damages, for the periods during which they possessed the estate?

I wish also to know, whether the situation of heirs and executors, who may be exposed to such claims, was considered by the Court; and in what manner the estate could be administered with reference to them. Put the case, that such a lease endured for nineteen years. Suppose,—what may not be according to the ordinary longevity of heirs of entail,—that there were nineteen successive heirs of entail during the currency of the lease:—Are each of those heirs entitled to bring a separate action of damages against the representatives or executors of the heir who let the leases? The funds belonging to the representatives may not be equal to meet all such actions. Were the represen-

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tatives bound to pay them all over to the first heir who brought an action? Or, were they to reserve them for the nineteen years? Or, how were they to administer the succession?

Respondents.—We certainly contend that every heir of entail who succeeds to the entailed estate, during the currency of a lease such as the present, is entitled to be indemnified by the representatives of the contravener, for the loss sustained by him in consequence of the contravention. And if the conclusions in the action brought by the first heir are not sufficient to include the claims of all succeeding heirs,—or if the representatives of the contravener are not willing to settle upon the principle established by the judgment pronounced in it, a separate action may be necessary at the instance of each heir succeeding. It may also happen, that the funds of the executors are not sufficient to meet all the claims, and, in such a case, the first heir would undoubtedly be in a more fortunate situation than those coming after; but this is merely the case of a wrong doer not leaving property sufficient to pay the damages due to the injured party. This can never touch the principle of the question, whether damages are due or not.

Lord Chancellor.—So in this way the first heir may carry away the whole, and leave nothing for those who succeed after him. I find great difficulty in collecting what was the notion of the Court of Session, how this judgment is to be executed in damages. It will not do to say, that the lease is out when the action is brought, because the very principle upon which you are to say that damages may be given in that case, must make you go the length of saying also, that if the lease had not been out, damages must have been given in that case: Then, how are the damages to be estimated as due to A, B, C, D, and E, every one of whom has a right to say, this lease has affected me in my interest in such a manner, that I also have a right to damages? If the Court of Session meant to determine, that if a case happened where five or six persons might come into esse during the period for which the lease had been granted, each and every of them from time to time had an action,—that is a very important point to decide; but I cannot find that that was at all adverted to in the judgment.

Besides, I observe the summons states the late Duke to have made this lease in defraud of those entitled after him; but it does not state any sort of advantage he got himself. Nor is it even

alleged in the summons, that he, in any shape or form, got more than £140 a-year; there is no allegation of that sort in the summons. May 22, 1826.

The House of Lords ordered, 'that the said cause be remitted 'back to the First Division of the Court of Session in Scotland, 'to review the interlocutor complained of, having in such review 'regard (among other considerations) to the consideration how 'damages are to be estimated, which are claimed by an heir 'succeeding to an estate, on account of a lease or tack subsist-'ing at the time of his succeeding to the estate having been 'made at an undervalue in point of rent, and which lease or 'tack such heir cannot according to law reduce; and with re-'spect to which lease or tack, it is uncertain at the time of 'the commencement of his suit, and at the time of pronouncing 'judgment therein, during what period of the endurance of the 'tack he may live, or his right to the estate may continue; and 'also to the consideration, whether, if such tack shall endure 'during a period in which several heirs entitled to succeed, shall 'succeed to the estate, it is competent to each of them so suc-'ceeding, to institute and maintain, upon their respectively suc-'ceeding, a like action or suit for damages on the like account; 'and how the damages are to be estimated in the respective ac-'tions or suits, which suit such heirs respectively shall so insti-'tute; and it is further ordered, that the Court to which this 'remit is made, do require the opinions of the Judges of the 'other Division in the matters and questions of law in this case 'in writing, which Judges of the other Division are so to give 'and communicate the same.'

LORD CHANCELLOR.—My Lords, in this extremely important case, I understand the Judges to have been unanimously of opinion, that this action can be maintained; it becomes therefore any person who has the honour of addressing your Lordships, if he should venture to express an opinion that the action cannot be maintained, to be quite sure that he is on safe ground, and on safe Scotch ground. There is one difficulty I have, to which I can get no answer at present, and which does not appear to have been at all considered by the learned Judges in Scotland. In the present case, it is held, that there is a right to damages in the individual who is the pursuer; but in order to determine whether an action for damages will lie, we must look to the case where a person in possession under an unrecorded entail makes leases of a duration, as we know they have been made, which may run to a considerable length, so as to pass through, not only the period in which the next person would be entitled to enjoy the estate, but which may pass through those periods

May 22, 1826. in which successive substitutes may succeed to the estate. If an action for damages will lie for him who is the heir who succeeds next, it may seem an action for damages must always lie, upon the same principle, at the suit and instance of every person whose enjoyment would be prejudiced by the lease; and what I want, therefore, to know is, how the judgment of the Court could be executed in such a case as that; for I cannot conceive that one is acting very properly in expressing a judgment as to which one does not know how it is to be executed. What I wish therefore to know is, if anything has passed in the Court below pointing out in what manner the Judges held, in the case I have supposed, that this sort of judgment could be executed. Did they mean to say, that if there were ten persons, for instance, coming into existence during the currency of the tack, each and every of them, when his title to the estate commenced, had a right to bring a fresh action; and, if so, how is the damage to be estimated ab ante with respect to each of them, when it is impossible to know how long each or any of them might continue to enjoy the estate? Whether that information can be communicated to me in any way without resorting to the Judges themselves, I do not know. If it could, I should be extremely glad to have it. If it cannot, I protest I do not know what to do in this cause; for I do not know how such a judgment in the case I have put could be executed; and if, in the case put, it would be difficult to say how it could be executed, the simplicity with which it can be executed in the case of a single individual, is no answer in such a case as I have stated.

My Lords, I am extremely unwilling to do that which was somewhat my practice, I mean in difficult cases, to remit the consideration to the Court of Session in Scotland, because I have heard enough upon that; and yet I think it but justice to myself to say, that I was informed by no less a person than my Lord Thurlow, that if I ever wanted any information of that sort from Scotland, there was no getting it but by making a remit. That led to a practice of which there has been some complaint, and which practice has not lately been persevered in. If, therefore, this information can be given me in any other way, I shall be very glad, for the sake of all parties, to have it given in any other way; if it cannot be given in any other way, I must in that way have it given, before I know how to advise this House.

Lord Chancellor.—My Lords, there is a case, an extremely important one, which stands for your Lordships' judgment, in which damages are sought against the representatives of the late Duke of Queensberry, in respect of a lease or tack he had made of a property at the rent of £140 a-year, and which lease or tack, the entail not being recorded, cannot be set aside.

The summons in this case on behalf of the present Marquis of Queensberry, calls on those in possession of the property of the late Duke of Queensberry, to make satisfaction for the difference between the rent

reserved under the tack, and the value of the property if it had been let in the ordinary course; the object of the suit being, in some way to make good to the present heir, who has now succeeded to Old Mains of Tinwald, as they call it, the loss that he sustains by having a lease granted of this estate at an under-value. It will occur, I think, to one noble and learned Lord who hears me, that, upon a former occasion, there was a good deal of consideration in this case, how far this could be sustained. May 22, 1826.

There has been a case before one Division of the Court of Session, the case of Ascog, in which they have held, that where there has been an entail which was not effectual against purchasers, and where, therefore, the party coming into possession of the estate was not able to set aside the sale, he was entitled to have the price, which he ought to have received, invested in lands for his benefit; and your Lordships see it is an operation very easily managed: it is declared, that they are to be settled for the benefit of all concerned and interested in the entail. That case, I believe, has not yet found its way to this House; but it has been supposed in the Court of Session that that case determines this case. Now, with reference to what passed on the former proceedings, and with reference to the difference between that case and this, it does appear to me, on the best consideration I can give it, that this case must be remitted back again to that Division of the Court of Session before whom it was heard, desiring them to take the opinion of the Judges of the other Division; and particularly, to pay attention to the circumstances which I will take the liberty to propose to your Lordships to insert in the judgment.

I think, my Lords, the order of your Lordships might be thus expressed:—'That the said cause be remitted back to the First Division of the 'Court of Session in Scotland, to review the interlocutor complained of, 'having, in such review, regard, among other considerations, to the con-'sideration, how damages are to be estimated;'—Before I read the rest of this, I will take the liberty of mentioning to your Lordships, that I have repeatedly inquired whether this consideration I am now about to mention, had been observed or attended to in the course of the arguments or judgment in the Court below, and how it was dealt with; and the answer they gave me upon the first part of the inquiry, was, that they did not remember that this had been thought of; and the answer to the other consideration was, by gentlemen who attended the Court below, that they were not able to give any precise information upon the subject;—'having, in such review, regard, among other considerations, to 'the consideration, how damages are to be estimated which are claimed 'by an heir succeeding to an estate, on account of a lease or tack sub-'sisting at the time of his succeeding to the estate, having been made at 'an under-value in point of rent, and which lease or tack such heir can-'not, according to law, reduce; and with respect to which lease or tack, 'it is uncertain at the time of the commencement of his suit, and at the 'time of pronouncing judgment therein, during what period of the endu-'rance of the tack he may live, or his right to the estate may continue;

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'and also to the consideration, whether, if such a tack shall endure during 'a period in which several heirs entitled to succeed shall succeed to the 'estate, it is competent to each of them so succeeding, to institute and 'maintain, upon their respectively succeeding, a like action or suit for 'damages on the like account, and how the damages are to be estimated 'in the respective actions or suits which such heirs respectively shall so 'institute.' In estimating how the difference in value is to be compensated, it is obviously necessary to consider, as it appears to me, whether, if the first heir succeeds to this estate, his damages must not be regulated by the time he is in possession of the estate, and so in respect to the heirs succeeding after him, each of them may be prejudiced as well as the first; and therefore we ought to know, in order to ascertain whether the judgment is right, by what rule of estimating, according to the law of Scotland, the damages would be apportioned in the case of each heir. If your Lordships see no objection to that mode of proceeding, it does appear to me, that it would be proper that both Divisions of the Court should be consulted upon this.

LORD REDESDALE.—I cannot see how this judgment can be executed.

LORD CHANCELLOR.—That is my conviction. It may happen when the next heir having a title to the estate succeeds, that he may not live even one year; what is the rule by which the damages are to be estimated? and in forming one's opinion whether the judgment of the Court can stand, surely one ought to see how it can be carried into effect; and with that view I take the liberty of submitting to your Lordships that which I have now read as the judgment of your Lordships, to remit the cause, with a special direction to take the opinion of both Divisions of the Court upon the question.

Appellants' Authorities.—Willison, Feb. 26, 1724. (15369.)—Strathaven, Feb. 2, 1728. (15373.)—Cuming, July 29, 1761. (15513.)—Erskine, Feb. 14, 1758. (15461.)—Gordon, July 8, 1777. (15462.)—Menzies, June 25, 1785. (15436.)—Wellwood, May 31, 1797. (15466.)—Miller, Feb. 12, 1799. (15471.)—Steele, May 12, 1814. (F. C.)—Stewart, July 8, 1789. (15535.)—Brown, May 25, 1808. (App. I. Tailzie.)—Henderson, Nov. 21, 1815. (F. C.)—3 Ersk. 8. 23.—Bryson, Jan. 22, 1760. (15511.)—Lord Ankerville, Aug. 8, 1787. (7010.)—Lockhart, June 11, 1811. (F. C.)—Bruce, Jan. 15, 1799. (15539.)

Respondent's Authorities.—Dal. on Feudal Property, p. 139.—Hope's Minor Practicks, tit. 16. § 9. 11. 13.—Mackenzie, vol. II. p. 490.—Bryson, Jan. 22, 1760. (15511.)—2 Stair, 3. 59.—3 Mack. Inst. 8. 17.—Treatise on Tailzies, v. II. p. 489.—Gibson, Nov. 24, 1795. (Bell's Cases.)—M'Nair, May 18, 1791. (Bell's Cases.)—Annotations on Stair, p. 110. 114.—3 Ersk. 8. 23. 27.—2 Bank. 3. 139.—Willison, Feb. 26, 1724. (15369.)—Hall, Feb. 1726. (Fol. Dict. v. II. p. 436.)—Gordon, Nov. 21, 1753. (10258.)—1 Stair, 3. 3.—3. Ersk. 3. 86.—Strathnaven, Feb. 2, 1728, (15373), affirmed, H. of Lords, Feb. 25, 1730. (Craigie and Stewart's Reports.)—Cuming, July 29, 1762. (15513.)—Young, Nov. 13, 1761. (Brown's Supp.)—Sutherland, Feb. 6, 1801. (App. voce Tailzie.)—Lockhart, June 11, 1811. (F. C.)—Lord Breadalbane, June 12, 1812. (F. C.)

J. CHALMER—J. CAMPBELL, Solicitors.