MAXWELL and Co., Appellants.—*Mr. John Campbell—Mr. Sandford.*

No. 22.

STEVENSON and Co., Respondents.—*Mr. Serjeant Spankie—Mr. P. Robertson.*

Sale.—Statute 6 Geo. IV. c. 112. Where grain, situated in a bonded warehouse, was sold by the occupier to another, who ordered it to be transferred to an agent, making an advance on the faith of it; and the seller delivered his set of the keys to the agent, the other set remaining with the revenue officer: Held, (reversing the judgment of the Court of Session,) that, although no written agreement of transfer had passed between the seller and buyer, and no entry was made in the books of the revenue officers, yet complete delivery had been made to the agent, and that the above statute did not apply.

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2D DIVISION. ADMIRALTY.

BY the 82d section of the 4 Geo. IV. c. 24. entitled "An "act to make more effectual provision for permitting goods im- "ported to be received in warehouses or other places, without "payment of duty on the first entry thereof," it is enacted, "That, from and after the commencement of this act, every "sale, fairly and bonâ fide made by the importer or importers, "proprietor or proprietors, of any goods or merchandize which "shall have been secured under the provisions of this act in "any warehouse in the actual occupation of such importer or "importers or proprietor or proprietors, such goods and mer- "chandize, and the possession thereof, shall, by such sale, be "transferred to and shall be vested in the purchaser or pur- "chasers thereof, to all intents and purposes whatever, although "such goods or merchandize shall continue in such warehouse; "and such goods or merchandize so sold, or the possession "thereof, or any title thereto, shall not pass to or be vested "in any assignee or assignees of such importer or importers or "proprietor or proprietors, under any commission of bankrupt "which may issue against such importer or importers or pro- "prietors, before such goods or merchandize shall have been "removed by the purchaser or purchasers, or their assigns, "out of or from such warehouse; and every such sale shall be "valid against such assignee or assignees under any such com- "mission of bankrupt, any law, custom, or usage to the contrary "notwithstanding; provided, that upon every such sale there "shall have been a written agreement, signed by the parties, or "a written contract of sale, made, executed, and delivered by "a broker or brokers, or other person or persons, legally autho-

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"rized, for and on behalf of the parties respectively, and the "amount of the price stipulated in the said contract or agree-"ment shall have been actually paid, or secured to be paid, by "the purchaser or purchasers of such goods or merchandize, and "that a transfer shall have been entered in a book to be kept "for that purpose by his Majesty's officers of revenue having "the charge of such warehouse; which book the commissioners "of his Majesty's customs and excise, both or either, as the case "may be, are hereby directed to cause to be kept by such "officer, and produced on demand; and the said officer is hereby "required to make such entry of transfer, specifying the date of "such entry, upon the application of the owners of the said "goods or merchandize: provided also, that no such assignment "shall affect the bond given to his Majesty, on the warehousing "of the goods or merchandize, for securing the payment of the "duties thereon." By the 9th section of the 6 Geo. IV. c. 112. which is entitled "An act for the warehousing of goods," and proceeds on a recital that it was desirable to consolidate the laws relative to the customs, it is enacted, "That if any goods, lodged "in any warehouse, shall be the property of the occupier of "such warehouse. and shall be bonâ fide sold by him, and upon "such sale there shall have been a written agreement, signed by "the parties, or a written contract of sale, made, executed, and "delivered by a broker or other person legally authorized, for or "on behalf of the parties respectively, and the amount of the "price stipulated in the said agreement or contract shall have "been actually paid or secured to be paid by the purchaser, "every such sale shall be valid, although such goods shall re-"main in such warehouse; provided, that a transfer of such "goods, according to such sale, shall have been entered in a book "to be kept for that purpose by the officer of the customs having "the charge of such warehouse, who is hereby required to keep "such book, and to enter such transfers, with the dates thereof, "upon application of the owners of the goods, and to produce "such book upon demand made."

In the month of July 1829 the respondents, Stevenson and Co., merchants in Leith, imported, by the Robert Brandt from Archangel, 1,229 quarters of oats. At this time they were the tenants of a bonded warehouse, situated in the Citadel of North Leith, in which they lodged the grain, in terms of the last

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of these statutes—the officer of the customs having one set of keys, while they had another. On the 13th they sold the grain to John Rennie of Phantassy, at the price of £1,016, for which he granted his bill, payable four months after date. On the same day Rennie transmitted a note to Stevenson and Co., directing them to deliver the grain to Maxwell and Co., corn factors in Leith, and his ordinary agents. In consequence of this order Stevenson and Co. sent their set of the keys to Maxwell and Co., accompanied by the following letter: "Leith, "14th July 1829.—Messrs. Maxwell & Co., Leith.—Gentle-"men,—Per bearer, we hand you the keys of Sanders's lofts, "No. 53–2 and 3, Citadel, North Leith, where the oats *ex* "Robert Brandt are lying; and beneath you have a note of "the different weighings by the porter at delivery. The quan-"tity is 1,229 imperial quarters. We are, &c.

"THOS. STEVENSON & Co."

Maxwell and Co. thereupon granted their acceptance for £2,000 to Rennie, on the credit of this consignment, and another of 500 quarters of wheat. This was acknowledged by Rennie in the following letter: "Maxwell & Co., Leith.—Edinburgh, "15th July 1829.—Dear Sirs,—I have this day received from "you your acceptance for £2,000, at 3 months, as advance "on 500 qrs. wheat, as per order on Anderson and Gavin; ' also to account of about 1,200 qrs. of oats delivered to you "by Thos. Stevenson & Co. Yours truly,

"JOHN RENNIE."

No written agreement passed between Stevenson and Co. and Rennie, and no transfer was made in the book of the officer of the customs.

Early in August Rennie became bankrupt, and Stevenson and Co., on the 15th, presented a petition to the Judge Admiral, setting forth the sale to Rennie and his bankruptcy, the order of delivery, the above clause of the 6 Geo. IV. c. 112, and praying for a warrant of service upon the officers of the customs, upon Rennie and Maxwell & Co.; and "to "decern and ordain the said collector, comptroller, and officer, "having the charge of the said warehouse, to deliver to the peti-"tioners the said cargo of oats, upon their paying the duties "legally chargeable thereon; and in the meantime to grant an "interdict, prohibiting and discharging the said John Rennie

April 4, 1831. "and Maxwell & Co. from removing the said oats, or any part "thereof, from the said warehouse, and also prohibiting and "discharging the said officer, having the charge of the said "warehouse, from making any entry in the book kept by him, "importing that any sale or transfer of the said oats has taken "place, or from delivering the said oats, or any part thereof, to "the said John Rennie or Maxwell & Co., or to any other per- "son than the petitioners; and in the event of any opposition "being made to this petition by any of the parties above men- "tioned, to find the party making such opposition liable in the "expences hereof and of the procedure to follow hereupon."

The officers of customs lodged answers, but the discussion on the merits took place with Maxwell & Co. alone. In defence, they maintained, 1st, that the delivery of the keys was not merely symbolical, but real and actual delivery of the grain; and, 2d, that the statute, 6 Geo. IV. c. 112. did not apply to this case, because it had reference to the case of a general bonded warehouse, where, from the variety of goods, the actual control and possession could not be given to the purchaser, but remained in that of the seller. Whereas, in the present case, the exclusive possession and control of the warehouse had been given to defenders, Maxwell and Co., except in so far as related to the duties. To this it was answered by Stevenson & Co.; 1st, that even at common law there had been no completed delivery, seeing that there was a joint custody, and consequently, the goods being still in transitu, they were entitled to prevent farther delivery being made; and, 2d, that the terms of the statute were quite explicit, the provision being express, that in order to form a complete sale there must be an entry made in the books of the officer.

The Judge Admiral pronounced this interlocutor: "Finds, "that the oats in question, after being imported by the peti- "tioners, were lodged in a bonded warehouse, of which the "petitioners kept one set of keys and the officers of customs "another, and the petitioners entered the goods at the custom- "house, and granted bond for payment of the duties, after the "usual manner; finds, that the mode of transferring such goods "is provided for in the ninth section of the 6th of George the "Fourth, chapter 112; finds, that the transfer to Maxwell & "Co. was not made in terms of that provision of the statute,

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" and that the delivery of the petitioners' set of keys to Maxwell " & Co. did not constitute a legal traditio: therefore appoints " the said Maxwell & Co. to restore to the petitioners the keys " of the warehouse, and prohibits and discharges them from " interfering with the petitioners' right to said oats; but, in " respect of the delivery which the petitioners made of the keys, " finds them not entitled to expences; and with respect to the " officers of the customs, in respect that the oats were entered " by the petitioners, and bond granted by them for payment " of the duties, finds, that said officers were not entitled to de- " liver the oats to any other person than the petitioners, unless " a transfer had been made, in terms of the 9th section of the " said statute; and as such transference did not take place, " there was no occasion to call the officers of the customs as " parties to this action; therefore assoilzies them, and finds them " entitled to their expences." He thereafter recalled it, in so far as it " appoints the keys to be delivered to Stevenson & Co., " in respect that the orginal petition contains no prayer to this " effect, but quoad ultra adhere," and communicated his opinion in the subjoined note.*

Maxwell & Co. complained to the Court of Session by advocation, but their Lordships † (2d March 1830) affirmed the judgments by repelling the reasons of advocation, and remitting simpliciter, with expences. ‡

* " It appears to me that the clause of the statute in question is precisely applicable " to the case which has occurred, and that the object of the Legislature was to intro- " duce a special mode of transference of all goods which were bonded in a cellar " occupied by the proprietor of the goods, whether the occupation was qua proprietor " or qua tenant; and it appears plain, that the occupation alluded to is that which " existed at the time of the sale. In all probability the view of the Legislature was " to prevent collusive or fictitious sales which might take place, if a mere delivery of " one set of keys of the warehouse were deemed sufficient, for this being a latent act, " the keys might be delivered one day and re-delivered the next: whereas, in the case " of bonded goods, there is a joint custody of the officers of the revenue, and of the " custodier of the cellar; and it was proper, not only that the joint custodiers should " be both parties to the sale, but the mode of transference prescribed rendered the " transaction a public act. Had the clause not been so express, I would have been " induced to order an inquiry into the practice of different ports; but the words " being, as I interpret them, clear, I do not think that such an inquiry would be " justifiable."

‡ 8 Shaw and Dunlop, 618.

† *Lord Cringletie* observed, This appeared to me to be one of the plainest cases in the world. It is true, that in the case of a party having goods in his private warehouse,

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Maxwell & Co. appealed.

Appellants.—The Court below have applied the provisions of the statute to a case which does not fall within it. These pro-

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if he sell the goods and deliver up the keys that is tradition of every thing. There is nobody there to intimate to. The act of parliament, however, does not apply to that case, but to bonded warehouses alone. If statutes provide a mode of carrying any transaction into effect, it is void if they be not strictly complied with. Now the cellar in the occupancy of Stevenson and Company is just within the very words of the statute; and when they sell, what have they to do but to observe the requisites of the statute? The sale is only good, if transferred in the books. But it is said that the keys were deliverd up. Of what use were the keys, when the purchaser could not get in without the King's keys? They could not give him access, and were of no use but to authorize him to have the sale entered, and the goods transferred in the books. Even if the 6th Geo. IV. had never been passed, and the question were on the old law, I should say that this sale was not effectual; and I can have no sort of doubt that the interlocutor of the Judge Admiral is right.

Lord Glenlee.—I am of the same opinion. The 6th Geo. IV. makes a distinction between the case where the goods are the property of the occupier of the warehouse, or of another party; and I have no doubt on the meaning of the words. The words are not, if the whole goods are sold; but, if any goods in the warehouse are sold, the act takes effect. Stephenson and Company were occupiers, and I am at a loss to see how the act should not apply. An attempt was made in the inferior court to distinguish when there were other goods in the warehouse; but there is a new view taken now, which astonishes me—that delivery of the key makes the buyer the occupier of the cellar. How did he come to be proprietor of the goods? The transference must first be made out to him, and it is good for nothing, if the solemnities required by the act are not preserved.

Lord Pitmilly.—This question is attended with difficulty; and it is a new case, though, on considering it, I concur in the opinions delivered. The question depends entirely on the construction of the 9th section of the statute. There is a distinction made between goods belonging to the occupier of the warehouse, and goods belonging to a person not the occupier; and the act only applies to the former case. This is, because there cannot be intimation to the keeper of the warehouse; and the act provides a mode of transfer, by intimation to the King's officer. The statute does not say that the solemnities are not necessary where the keys are delivered; and I see no authority for saying that delivery of the keys, which is not mentioned in the statute, should be equivalent to entry in the books, which is required; and therefore, though this might have been a reasonable provision, yet, taking the words of the statute, I concur.

Lord Justice Clerk.—I must say, after paying all attention to the act, &c. that so far from considering this a question free from difficulty, I think it one of great difficulty and nicety indeed, and I doubt exceedingly how far the construction put upon the statute is applicable to the case here. I do not think the facts are sufficiently set forth in the record, particularly as to the character of cellars for bonded corn. If there were in the cellar other goods which could not be taken out without payment of the duties, the act of parliament unquestionably applies, as, in such a case, it would be merely an attempt to give symbolical delivery, by delivering, for half an hour, the keys which must be forthcoming to take out the other goods.

visions were meant to protect purchasers from the hardship arising from the rule of the common law, in regard to the necessity of actual delivery, although every other precaution had been adopted to put the third parties on their guard. This had been strongly brought under public notice in the case of Knowles v. Horsfall. In that case certain casks of brandies, deposited partly in bonded vaults occupied by the seller, and partly in bonded warehouses kept by a third party, were sold, and marked with the initials of the purchaser, and the sale was notorious to those who were carrying on trade in the neighbourhood. The duties not being paid, they remained in their original position, and on the bankruptcy of the seller they were claimed by his assignees. The Court of King's Bench found themselves constrained to prefer the assignees, notwithstanding that the purchaser had bonâ fide paid the price, and the casks had been marked with his initials. To remedy this evil, it was suggested, that wherever goods were so situated that the purchaser could not receive exclusive possession of the warehouse by reason of other goods being placed there, it should be held sufficient delivery that a written agreement of sale had taken place, and an entry thereof to be made in a book to be kept by the officer of the customs. Accordingly the 4 Geo. IV. c. 24. provides, that in the case of the sale of goods situated "in any warehouse in "the actual occupation of such importer or importers or pro- "prietor or proprietors, such goods and merchandize, and the "possession thereof, shall by such sale be transferred to and shall "be vested in the purchaser or purchasers thereof, although such "goods or merchandize shall continue in such warehouse;" and that the same shall be effectual against any assignee under a commission of bankrupt, provided that there was a written agreement of sale, the price paid or secured, and an entry made

The case alluded to seems to be that of a general bonded warehouse; and the statute provides a rule of transfer, without removal, to afford facility for the purposes of trade. The meaning is plain, and the reason was, that no intimation could be made to the keeper of the cellar, who is the vender himself. But the case here is different. We must, under this record, assume that there were no other goods in the cellar. Then, this person being occupier, is his case provided for? I think it is attended with very considerable doubt; and when it is averred that, in practice, entry in the books is never required, in any great port in the kingdom, in circumstances like the present, I confess that I doubt exceedingly the application of the statute.

April 4, 1831. in the books of the officers of the revenue. The same provision is in substance introduced into the 6 Geo. IV. c. 112. which was not intended to repeal, but to consolidate the previous existing statutes. In the present case the whole quantity of grain was transferred to the appellants, and the exclusive possession of the warehouse given to them by delivery of the keys, so that it did not remain in the occupation of the respondents, but in that of the appellants; and consequently the Court below acted erroneously in applying the statute to a case of this nature.

Respondents.—The words of the statute are plainly applicable to every sale of bonded property, where the goods are within any warehouse occupied by the seller. Numerous questions have arisen at common law as to what should be held constructive on actual delivery where goods were so situated; and in order to obviate these disputes (which were highly prejudicial to commerce) the legislature expressly enacted, that if goods, situated in the warehouse of the seller, should be sold, and actual delivery not made, they should only be held to be delivered provided a written transfer were executed, and an entry thereof made in the books of the officer. But in the present case the goods were situated in premises occupied by the respondents, for the rent of which they are responsible, were never delivered, no transfer made, and no entry in the revenue books. It never could be the intention of the legislature to establish a rule in such general terms, which was to have reference only to particular classes of cases, and which would necessarily be productive of litigation, in ascertaining the matter of fact whether the particular case fell within the class.

Lord Chancellor.—My Lords, I really consider the present question so perfectly free from doubt, that I do not trouble you to hear the counsel for the appellant in reply. Their Lordships in the Court below appear to have differed extremely upon it. One says, that it appears to him one of the plainest cases in the world; and then he goes on to state, as a general maxim of law, that "if statutes "provide a mode of carrying any transaction into effect, it is "void if they be not strictly complied with." The rule of law is much nearer the reverse; for unless the statute is imperative, and provides, expressly or by plain implication, for the invalidity of an

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instrument if the requisites be not complied with, it is merely directory; and one of the propositions in law, the best known and most commonly cited, is, that a directory order in a statute needs not be complied with. Where it is merely directory, there is no forfeiture, no nullity, no invalidity by a breach of the direction; and in all such cases the question is, whether the order is directory or imperative, or, what is the same thing, treats a matter as a condition precedent. Now, the description the learned judge gives of what he deems imperative is descriptive of that which is directory. However, be that as it may, there are more serious objections to this decision. The next learned judge never seems to have applied his mind to the question, whether or not that principle touched the case. Lord Pitmilly considers it a difficult case, but, upon the whole, concurs in the opinion delivered, and says, it depends upon the construction of the 9th section of the statute. But this is clearly wrong--it does not depend upon that; it depends upon whether the 9th section of the act applies to this case. That is the question if there be a question. Then observes the Lord Justice Clerk, "I must say, after "paying all attention to the act, &c., that so far from considering "this a question free from difficulty, I think it is one of great "difficulty and nicety indeed; and I doubt exceedingly how far "the construction put upon the statute is applicable to the case "here." But the rest of his opinion clearly shows that he never got a full and distinct view of the question before us, which is simply this, Whether there is any thing at common law, or any thing in this act, that renders the sale invalid, unless a compliance is had with the directions in the 9th section? Now, we in this country being familiar with the act, and with the case of Knowles *v.* Horsfall, and knowing how far that case and this 9th section of the act apply,— plainly see the mistake into which the Court below have fallen. Those judges who say it is a nice question are really almost as wrong as the others. There is no nicety in it; you might as well say there is doubt whether the eldest son is heir to his father. The fact is, that the old statute of James, and our bankrupt law, generally give to the creditors of a bankrupt, represented by the assignee, not only the goods in the possession of the bankrupt by a title of his own, but those which he may have sold, but of which he retains the possession and management. If he has the outward possession and management of certain goods, though he has sold them, and got the purchase money in his pocket, those goods pass to the assignee. That is the law of the land as to bankrupts. Then comes this hard case; and in all these cases the question is, Whether that is a possession within the meaning of the act—whether that, which is an apparent possession, satisfies the meaning of

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the act of James? That question arose in the case of Knowles *v.* Horsfall. The party there had a lot of wines in his cellars. Knowles bought them by a sale-note of the seller. They were still in the bonded warehouse occupied by Horsfall; and though Knowles entered the cellar in that bonded warehouse with his leave and licence, and put a K upon them, and severed them from the rest of the stock, the question arose, Whether they were in the outward possession of the bankrupt, and came within the description in the statute of James? The Court held the affirmative reluctantly, though they had no doubt upon the law, but they held it reluctantly, and expressed their opinion that it was a hard case, because it was from the mere circumstance of their having been in a bonded warehouse that the question could arise; but they decided the question against the purchaser, and in favour of the assignees. Now, that was found to be a great hardship, and which could only have arisen in the case of a bonded warehouse occupied by the bankrupt; and it was conceived the party had done enough by marking the casks, to take them out of the possession of the bankrupt. And this section was inserted, " And be it further enacted, " that if any goods lodged in any warehouse shall be the property " of the occupier of the warehouse, and shall be bonâ fide sold by him."—Can any mortal man imagine that the act should make such a provision for validating sales, and confine the validity to to one particular case, that may not happen once in ten times, of the goods being in a warehouse in the occupation of the seller of the goods? Why should not the same provision be made to render valid sales where the goods are not in the warehouse of the seller? But there is no such provision. Suppose goods in the king's warehouse or under the king's lock, not in the possession of the importer, that is *casus omissus* in the statute. I do not see why that should not be validated—the one is just as good as the other. But it is necessary that they should be bonâ fide sold. A sale means generally a bonâ fide sale, or it is no sale; but when you see those words in the act, it means such a sale, in such a form, and upon such good faith, as to exclude the claims of third parties,—" and " upon such sale there shall have been a written agreement signed " by the parties." That is not necessary to make a sale of goods in your warehouse, or any other place, if they are not of 10*l.* value. The statute of frauds does not require it; but this statute requires it,—" or a written contract of sale, made, executed, and delivered by " a broker or other person legally authorized, for or on behalf of " the parties respectively, and the amount of the price stipulated " in the said agreement or contract shall have been actually paid " or secured to be paid by the purchaser." That is exactly in order

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to show it must be a bonâ fide sale, regularly made by a written instrument from the seller to the purchaser, for a valuable consideration—not executory, but a regular sale executed, securing the price of the goods sold. This is quite immaterial to a common sale, but it is clearly material to a sale that is to have the effect of ousting the claims of a bankrupt's creditors; and to take it out of the operation of the statute of James, "every such sale shall be valid "although such goods shall remain in such warehouse, provided "that a transfer of such goods, according to such sale, shall have "been entered in a book to be kept for that purpose by the officer "of the customs having the charge of such warehouse, who is "hereby required to keep such book, and to enter such transfers, "with the dates thereof, upon the application of the owners of the goods, and to produce such book upon demand made." My Lords, I have therefore no doubt whatever. No man can doubt that this decision is erroneous. It proceeds upon an erroneous view of the subject, and raises up an invalidity the law knows nothing of, and then says, unless you bring yourself within the exception—a sort of negative pregnant arising out of a very full affirmative—the transaction is invalid. But unless you can assume that to be the law which is perfect nonsense, I do not see how it is possible to maintain this decision. With respect to the payment of duties by Messrs. Stevenson, I suppose, upon the sale to Mr. Rennie, they deducted them, recouping themselves by a part of the price from Mr. Rennie; and I suppose Mr. Rennie recouped himself by his undersale to Messrs. Maxwell; but I am stopped upon that—that must be dealt with in another way. Then we have Messrs. Stevenson delivering the key to Messrs. Maxwell and Company, admitting them to be the purchasers under Mr. Rennie. As to the letters, they may be genuine letters—they may be letters written by Mr. Rennie to Messrs. Maxwell—but they are no evidence as against Messrs. Stevenson. The proof of the matters contained in them ought to be by calling the parties who wrote them, and subjecting them to cross-examination. But what gets rid of all the difficulty that has occurred by the sale by Rennie to Maxwell and Company is this, that Maxwell and Company could have no right to the delivery of the goods from Stevenson, except by virtue of that sale to Rennie. They had sold to Rennie, and they deliver not to Rennie, but Maxwell & Co.; that is an adoption by them of Rennie's contract. If I deliver the key of a warehouse, it is a symbolical delivery of the warehouse, but an actual delivery of the goods in the warehouse; whether it is a delivery of all the goods I have there, there is some little doubt about; but if I deliver the keys, with a delivery-note,

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directing the stakeholder, the warehouseman, or the King's lock-keeper, to give the goods up, that is a delivery of the goods to the party; and all question as to *transitus* or stoppage in transitu is at an end. For these reasons I feel no hesitation in recommending your Lordships to reverse the interlocutors complained of.

The House of Lords ordered and adjudged, That the interlocutors complained of be reversed.

Appellants' Authorities.—1 Bell, 175; Auld, June 12, 1811; (F.C.) Knowles, 5 Barn. & Ald. 134; 1 Bell, 195.

RICHARDSON and CONNELL—M'RAE,—Solicitors.

No. 23. FRANCIS GRAHAM, Appellant.—*T. H. Miller—Rutherford.*

STEWART JOLLY, Respondent.—*Lord Advocate (Jeffrey)—Lushington.*

Entail—Homologation—Landlord and Tenant.—Held (affirming the judgment of the Court of Session), that an heir of entail had by acts of homologation rendered himself liable for meliorations under an obligation granted in a tack by a preceding heir.—But, 2, (reversing the judgment), that under a clause in a lease, providing that the tenant should have right to the difference of value between the houses on the farm at the date of the tack, and of those on the farm at the termination of it, the tenant was entitled to the value in so far as the houses on the farm at the date of the tack were improved, or others suitable to the farm built in lieu of the same, and better than the same at the expiration of the tack; but not of houses built new except as above.

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2D DIVISION.
Lord Cringletie.

CAPTAIN FRANCIS GRAHAM executed an entail of the estate of Morphie, which contained the following prohibition, fortified by irritant and resolutive clauses:—" That it shall be noways " lawful to the said William Barclay, and his foresaids, nor to " the other heirs of tailzie herein substituted to him, to alter, in-" fringe, or break the said tailzie, order, or course of succession, " nor to sell, dispone, redeemablie or irredeemablie, the said " lands of Morphie-Meikle, and lands of Pilmour, nor any part