

1740.

LORD GAR-  
NOCK, &c.

v.

EARL OF  
GLASGOW, &c.

GEORGE, VISCOUNT GARNOCK, *et alii*, *Appellants* ;  
EARL OF GLASGOW, *et alii*, - - *Respondents*.

18th April, 1740.

TAILZIE,—ACT 1685, c. 22.—The act 1685, respecting the registration of entails, applies as well to entails made prior, as to those made subsequent to its date.

The fetters of an unregistered entail not having been inserted in the rights and infeftments of an heir, although referred to generally, are ineffectual against the creditors of the heir.

---

[Elchies *voce* Tailzie, No. 7.]

---

THIS case arose out of the reservation contained in No. 55. the judgment of the House of Lords, in the question between John, Master of Garnock, and his tutor, and Patrick, Viscount of Garnock, and his creditors: (No. 34, *supra*.)

Viscount Patrick, (the respondent in the former case,) possessed the estate until his death, without inserting in his titles the fetters of the entail, and was succeeded by his eldest son, Viscount John, who made up titles to the estate, without serving heir to his father.

The creditors both of Viscount Patrick and of his father, then brought an action of declarator against Viscount John, and the other heirs of entail, to have it found that the entail was not effectual against them. The defences were the same as those pleaded in the former action.

1740.

LORD GAR-  
NOCK, &c.  
v.  
EARL OF  
GLASGOW, &c.

The Lord Ordinary, (10th February, 1736,) repelled the defences, “ and sustained the declaration, at the instance of those creditors whose debts were contracted after the date of the act 1685, by the heirs whose retours and infeftments did not expressly contain the prohibitory, irritant, and resolute clauses contained in the entail.” And the Court adhered, (July 15, 1736.)

Entered  
Feb. 6, 1739.

Upon the death of Viscount John, an appeal was brought by his brother, Viscount George, and his tutors, from these interlocutors of the 10th of February, and 15th of July, 1736.

*Pleaded for the Appellants:*—1. As the infeftments of Viscount John and Viscount Patrick contained a general reference to the fetters of the entail, this ought to be as effectual as the actual *verbatim* insertion of them, because third parties were thereby sufficiently informed of their existence, and ought to have been upon their guard.

2. The act 1685 could only have been intended to regulate entails made subsequent to the date of it: for there are no directions contained in it relative to entails which were in existence at the time.

*Pleaded for the Respondents:*—1. The words of the act are express, and apply to all entails whatsoever, viz. That the omission of the necessary clauses in the rights of the succeeding heirs shall import a contravention against the heir, so omitting, “ but shall not militate against creditors and singular successors contracting *bona fide* with such heir.”

2. If there were any doubt whether the act 1685 had a retrospective effect, it would be cleared up

by the act 1690, c. 33, which enacts, “ that no  
 “ heirs of entail, in infeftments, or other deeds  
 “ affected with prohibitory, irritant, and resolute  
 “ clauses, in case of contravention of the provision,  
 “ shall be prejudged by the forfeiture of his pre-  
 “ decessor, *providing the right of tailzie be regis-*  
 “ *trate, conform to the act of Parliament 1685.*” As  
 this statute applies generally to all entails, whether  
 prior or subsequent to the act 1685, and yet does  
 not protect those which are not registered accord-  
 ing to that act, it shows that all entails, without re-  
 gard to their being made prior or subsequent to  
 the act, must be registered conformably to it.

1740.  


---

 LORD GAR-  
 NOCK, &c.  
 v.  
 EARL OF  
 GLASGOW, &c.

After hearing counsel, “ it is ordered and ad-  
 “ judged, &c. that the said petition and appeal be,  
 “ and is hereby dismissed this House, and that the  
 “ said interlocutor of the Lord Ordinary, and the  
 “ said adherence thereto by the Lords of Session  
 “ be, and the same are hereby affirmed.”

Judgment,  
 Apr. 18, 1740.

For Appellants, *Ch. Areskine, W. Hamilton.*

For Respondents, *Alex. Lockhart, W. Murray.*