

1820.

MAJENDIE,
&C.
v.
CARRUTHERS.

heir male of the body of her mother; and therefore, has no title to sue.

Besides the deed of entail and contract of marriage, 1708, is an effectual and subsisting title, and that being a subsisting and effectual title, it affords a good defence to the action of the appellant on the marriage contract, 1735. The latter deed was granted in prejudice and in contravention of the rights of the heirs of entail, and contrary to the powers of Francis Carruthers, who executed that deed in 1735.

After hearing counsel,

It was ordered and adjudged that the interlocutors be, and the same are hereby affirmed.

For the Appellants, *R. Gifford, Mat. Ross, Wm. Erskine.*

For the Respondents, *John Clerk, James Moncreiff, John Hope.*

[Hunter's Landlord and Tenant, vol. ii., p. 476.]

1820.

THE DUKE OF
ROXBURGHE
v.
ROBERTON.

JAMES DUKE OF ROXBURGHE, . . . *Appellant;*
JOHN ROBERTON, late Tenant of Newton, *Respondent.*

House of Lords, 17th July 1820.

LANDLORD AND TENANT—LEASE—STRAW OF THE WAY-GOING CROP.—Held under a clause in the lease, that the landlord was entitled to prevent the disposal of the straw or hay of the way-going crop, it being provided, that it should always be spent on the farm.

Dec. 28, 1815.

In a lease granted to the respondent of the farm of Newton, belonging to the appellant, there was the following clause: "at no time shall the said John Roberton, or his foresaids, sell or give away any of the hay or straw of said farm, which shall always be spent on the ground." The tenant at the expiry of his lease, gave notice, that he meant to sell the whole straw of that crop, unless the appellant would take the crop, both corn and straw, at a valuation, insisting that the above clause in his lease did not refer to the last year of the lease; whereupon the Duke brought a suspension and interdict (injunction). The Lord Ordinary held, that the above clause could "not be held as applicable to the hay or straw of the out-going crop." And to this, the Court, on two several reclaiming petitions, adhered.

Against these interlocutors the present appeal was brought to the House of Lords.

1820.

THE DUKE OF
ROXBURGHE
v.
ROBERTON.

After hearing counsel,

It was ordered and declared, that the respondent, according to the true intent and construction of the tack, is not entitled to sell or give away any of the hay or straw upon the farm, at any time during the continuance of the tack, or upon the same, at the time of the expiry of the tack; and it is ordered, that, with this declaration, the cause be remitted back to the Court of Session to review the interlocutors complained of, and further to do in the cause as is just and consistent with this declaration.

Journals of the
House of
Lords.

For the Appellant, *F. Jeffrey, J. H. Mackenzie.*

For the Respondent, *Chas. Wetherell, John A. Murray.*

1820.

RICHARD HOTCHKIS, W.S., and JAMES TYTLER, W.S., Trustees of the deceased Colonel William Dickson of Kilbucho, } *Appellants;*

HOTCHKIS, &C.
v.
DICKSON.

JOHN DICKSON, Esq., Advocate, of Kilbucho, } *Respondent.*

House of Lords, 19th July 1820.

REDUCTION OF DEED—ERASURE.—Held, that a deed of entail had not been executed under the influence of fraud or compulsion, but voluntary on the part of the maker, and was, therefore, not reducible.

A reduction was brought by the appellants against the respondent, whereby they sought to set aside a certain deed of entail, which they alleged had been executed, not in terms of the entailer's intention, but through the fraud of the respondent, his brother, now possessing the estate, whereby their constituent's right in the said estate of Kilbucho had been limited to a liferent instead of giving him absolute powers over his own estate.

The Lord Ordinary pronounced this interlocutor "In re- Nov. 16, 1813.
"spect, 1st, That it does appear that the execution of the
"deed of entail 1809, was, under all circumstances, a