

highly unjustifiable, vexatious, and oppressive, by neglecting to bring proof of the property when he ought to have brought it at first, and by wilfully disdainng to apply to the Sheriff for that end, as others in the like cases have done, in order to recover their strayed cattle, and also from his insisting upon prosecuting, after the appellant offered to make satisfaction for the value, if the stott really belonged to him.

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Pleaded by the Respondent.—The respondent did enter his claim to the property of the ox in due time, which he notified to the appellant, praying redelivery, and offering payment of whatever sum might be demanded in name of grass mail and other expenses; and the evidence then given that the ox belonged to him was such as ought to have satisfied the appellant.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For the Appellant, *W. Grant, W. Murray.*

For the Respondent, *Alex. Lockhart, A. Forrester.*

NOTE.—This case, from the peculiar nature of the dispute, and the trivial sum involved, produced a good deal of noise in Westminster Hall. It is mentioned in Blackstone's Commentaries, 8vo. Edit. vol. iii. p. 393.

(Mor. 14,019, *et* Lord Monboddo's Remarks, 5 Brown's Sup. 926, *et* Bell's Com. p. 659.)

THE EARL OF ROSEBERRY,	<i>Appellant ;</i>
THE CREDITORS OF HUGH LORD VISCOUNT PRIMROSE,	} <i>Respondents.</i>	
Deceased,	

House of Lords, 3d April, 1767.

ENTAIL—REGISTRATION—ACT 1685—PASSIVE REPRESENTATION.—

(1.) An entail was made, and charter and infestment passed thereon some years before the Act 1685, regarding the recording of entails, Held, that in order to protect against creditors, such an entail must be recorded. (2.)

An heir succeeding, not by an universal title, but as heir under a particular destination, and not *hæres alioquin successurus*, found only liable to the extent of the value to which he succeeded.

Sir Archibald Primrose, Bart., executed a strict entail of his estate of Carrington, or Primrose, in 1680, in favour of his eldest son, Sir William Primrose, and the heirs male of his body, with several remainders over. Charter under the great seal passed on this entail, of this date, and the infestment taken thereupon was recorded in the proper register.

1681.

Apr. 29, 1682.

The prohibitory, irritant and resolute clauses of the entail, which were directed against selling, alienating, wadsetting, and the contraction of debts, were repeated in the charter and infestment, and also in all the subsequent investitures of the estate.

1767.

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In 1685, four years after executing this entail, the act regarding the registration of entails was passed; and it was alleged by the appellant, that it was understood, at the time the act was passed, that it was only applicable to entails executed subsequent to its date.

In 1690, an act was passed "for the security of the creditors, vassals, and heirs of entail, of persons forfeited," by which it is provided that the heirs of entail shall not be prejudiced by the forfeitures of their predecessors, "provided the right of tailzie be registered, and conform to the act of Parliament in the year 1685."

In consequence of this act, some of the old entails made before the year 1685, were produced to the Lords of Session, and recorded in terms of the act 1685.

1741. The male line of Sir William Primrose having failed by the death of Hugh Lord Viscount Primrose, in May 1741, without issue, the succession to the entailed estate opened to the next remainder man, James Earl of Roseberry, who was served, retoured, and infest, as heir of tailzie to the Viscount, and his infestment duly recorded.

The Viscount Primrose died much in debt, his unentailed estate and his personal property being inadequate to pay the claims of his creditors.

After the entailed estate had been possessed by the appellant and his predecessors for 22 years, the creditors of Lord Viscount Primrose raised an action against the appellant, as heir of provision in the Primrose estate, for the payment of the balance still due to them. This they did, upon the ground that the entail was invalid against creditors, in consequence of its not being recorded, contending that the act 1685 applied to entails made before, as well as subsequent to, the date thereof.

The answer made was, that the act only applied to entails made subsequent to its date. But here the entail was completed by charter and infestment before the statute ordering the registration of entails was passed.

June 25, 1765. The Lords pronounced this interlocutor: "Find, that the tailzie
" of the estate of Primrose, founded on by the defender, though
" bearing date, and completed by infestment, prior to the act con-
" cerning tailzies in the year 1685; yet, not having been recorded
" in the register of tailzies, in terms of that statute, is not effectual
" against creditors, and therefore the Lords repel the defence founded
" on the said tailzie, and remit to the Lord Ordinary to proceed
" accordingly." On further petition, in which, besides arguing the
point of registration, the appellant contended, that as he took the
estate of Primrose in the character of heir of provision to the Vis-
count, and not by a universal title, he could only be liable to the
creditors *in valorem* of that succession. The Court adhered as to
July 9, 1765. the registration of the entail; and as to the second point, remitted
to the Ordinary. The Lord Ordinary thereafter ordained the credi-