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far as they relate to the erecting of the new pier at Newport harbour. And it is further ordered, that the cause be remitted to the Court of Session, to review the interlocutors, so far as they relate to such pier.

For the Appellants, *John Clerk, Jas. L' Amy.*

For the Respondents, *Sir Saml. Romilly, J. Moncrieff.*

NOTE.—Unreported in the Court of Session.

JOHN BAYNE, HUGH STEVENSON, The OBAN TAN WORK COMPANY, The OBAN BREWERY COMPANY, DONALD M'INTYRE, and Others, Feuars in the Village of Oban, - - - - -	}	<i>Appellants;</i>
DAVID CAMPBELL, of Combie, Esq., -	}	<i>Respondent.</i>

House of Lords, 14th April 1815.

SUPERIOR AND VASSAL—FEU RIGHTS—GRAZINGS.—Feus having been granted by a common agent on the estate, with a right to grazing, in an action at the instance of the purchaser of the estate, these feu rights were reduced, in so far as they conferred privileges of grazing on particular lands, it appearing from the original bargain that these grazings were only to be let on lease, and not granted in feu, and therefore *ultra vires*.

An action of reduction was brought by the respondent, of the several feu charters granted by his authors, “in so far as they severally contain grants in property of the privilege of grazing horses and cows, or other bestial, upon the pasture lands of the farm of Lower Glencrutten” granted in favour of the appellants.

In defence, the appellants, the feuars, stated the following circumstances:—That at a time when it was proposed to erect the village of Oban, by the then proprietor, Donald Campbell of Dunstaffnage, he advertised the lands of Glencrutten and Oban to be feued. It was only on his offering certain privileges and encouragements that the projected plan of feuing and erecting the town could succeed. Accordingly the appellants became feuars, each of them taking feus, and these feus were granted, with the privilege of grazing a number of horses and cows upon the lands of Lower Glencrutten. No missive letters or minutes had been drawn out or exchanged between them; and no charters or feu rights were

granted them at the time. They paid the purchase price, and received a written receipt from Dunstaffnage, for the same, whereupon they proceeded to erect their several buildings, being assured by Mr Campbell, that regular feu rights would be granted.

In 1794 the appellants became uneasy about not obtaining their charters, and urged their completion. The matter was already in the hands of Mr Allan M'Dougall, Mr Campbell of Dunstaffnage's, law-agent; and, being dilatory in the business, Mr Campbell addressed to him the following letter:—

“ *Oban, 13th Dec. 1794.*”

“ DEAR SIR,—I have had a conversation with the feuars,
 “ who are extremely anxious to have their charters, as they
 “ consider themselves rather in an awkward situation till they
 “ have them. You will therefore be so good as get the whole
 “ of them extended without loss of time; and how soon they
 “ are ready, send them by post, directed to me, at this place.
 “ If the business of the session hurries you so much, as that you
 “ cannot get them done immediately, the feuars are so urgent
 “ to have them, that they wish, in that case, you to send the
 “ drafts, *as corrected*, here, so that they may be extended in
 “ the country; but this, for my part, I refer to you. At
 “ sametime I am of opinion that sending the drafts will be
 “ preferable; it being suggested by Mr Hugh Stevenson and
 “ John Bayne that the boundaries and descriptions of the
 “ different stances can be more correctly ascertained here
 “ than from the plan; but the feuars don't mean by this to
 “ deprive you of the fee payable by such. In that case, be
 “ so good as send the vellum necessary; which, and the
 “ drafts, *they* beg you will send as soon as possible, as above.
 “ —I am, dear Sir,

(Signed) “ DON. CAMPBELL.”

It also appeared that, though the draft charters were revised by Mr Campbell himself, and by his agent, Mr M'Dougall, with the privilege of grazing above alluded to, set forth therein, yet Mr M'Dougall neglected, in terms of the above instructions, to extend and complete the charters before Mr Campbell's death, which happened early in the year 1795. His affairs were much involved. He had executed a trust-deed before his death, and the estate was sold by his creditors, a ranking and sale having been brought for that purpose. In the articles of roup there was a saving clause, “That the purchaser of Lot 6, shall be bound and obliged to implement

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“ *all minutes, missives, and bargains betwixt the said deceased Donald Campbell, and the persons who erected houses or other buildings in the village of Oban.*”

June 28, 1804.

It now became necessary for the feuars to attend to their interests. They demanded that the common agent should grant them the charters, who, on production of their receipts, and the revised feu charters prepared in Mr Campbell's lifetime, and other letters, showing the transaction, granted them the charters in terms thereof, of this date, and they were infeft.

Sometime thereafter the estate was sold under express burden of the feu charters granted in favour of the appellants, as well as of the “ Minutes, missives, and bargains between the deceased Donald Campbell of Dunstaffnage, and those persons who erected houses and buildings in the village of Oban, in so far as the said minutes, missives, and bargains were binding on the heirs and successors of the defunct.”

The respondent then became purchaser at the public sale under these conditions; and his disposition contained an express exception from the warrandice of these feu charters.

But he contended that Mr Selkrig had no power to grant these feus, in so far as the grazings were concerned, and set forth facts which will be found in the Lord Ordinary's interlocutor.

June 14, 1809.

Upon this, the Lord Ordinary pronounced this interlocutor :
“ Finds that Mr Selkrig, as trustee for the creditors of Hay Smith, the original purchaser of that part of the estate of Dunstaffnage which was connected with the village of Oban, had no power, and cannot be considered as having intended to grant feus of other lands, or in other terms than those agreed to by the late Donald Campbell of Dunstaffnage, as pointed out in the decree of sale in favour of Hay Smith, containing a clause, by which the purchaser was bound to implement all minutes, missives, and bargains between the deceased Donald Campbell, and the persons who have erected houses, or other buildings in the village of Oban, regarding such buildings, in so far as the said minutes, missives, or bargains, are binding on the heirs of the said defunct, as well as in a similar clause in the articles of roup, on which the lands were purchased by the pursuer : Finds that Mr Selkrig did not receive any additional price or grassum, which could have entitled the defender to conditions more favourable than those which had been proposed and agreed on from the first : Finds, that by the original memorandum drawn up by Dunstaffnage, two acres of

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“ arable land were let for nineteen years at an agreed rent,
 “ with the houses that pay £20 entry money, and one acre
 “ with each of the other houses without any mention of grass;
 “ Finds, that by the missives with the defender, John Bayne,
 “ 31st August 1793, there are to be let in tack, six acres, for
 “ the space of nineteen years, and grass for cows, conform to
 “ the number of houses held in feu, for same space as the
 “ above acres, at a reasonable rate yearly, and that by similar
 “ missives with the defender, John Sinclair, two acres of
 “ land are to be let for nineteen years, from Whitsunday
 “ 1792, at 17s. 6d. per acre, and grass for cows to be allowed
 “ for the same period: Finds that the memorandums in favour
 “ of the feuars have all, except two, been recovered, but in
 “ none of them is anything stated with respect to perpetual
 “ right to grass for cows: Finds that a memorandum holograph
 “ of the late Mr Allan M'Dougall, agent for Dunstaffnage,
 “ states that the grass for cows cannot be granted in feu, but
 “ only in lease of the same endurance with the lease of the
 “ lands, and that a circumflex appears upon the drafts of two
 “ feu contracts, one proposed to be entered into with the
 “ Oban Brewery Company in 1794, and the other with the
 “ Tan Work Company, comprehending the clauses errone-
 “ ously inserted in the view of conveying the grass lands as
 “ part of the feus: Finds that the trustees of Captain Camp-
 “ bell, younger of Dunstaffnage, declined subscribing a feu
 “ contract, in which the grass land was given in feu, but
 “ agreed to give a lease thereof for the same endurance with
 “ the acres, conform to the original agreements: Lastly,
 “ finds the defenders themselves, or some of them, when
 “ examined as witnesses, in making up the judicial rent, de-
 “ poned that the grass lands were to be held in lease. With
 “ respect to the lands of Point included in the charter granted
 “ by Mr Selkrig to the defender, Hugh Stevenson, finds that
 “ it was not contained in any of the original minutes or me-
 “ morandums, while that signed by Stevenson himself, com-
 “ prehended only the stances of houses, and no other subject
 “ whatever, and that the lands of Point are not mentioned in
 “ the scroll feu-charters in 1794 or 1795, though this last was
 “ in favour of the said Hugh Stevenson, who, on two different
 “ occasions, namely, in a process of mails and duties against
 “ Dunstaffnage, and in the proof in the process of sale, made
 “ oath that he held said lands merely in lease: Finds that
 “ the present challenge of the feu-charters granted by Mr
 “ Selkrig, in so far as they go beyond the original bargains,

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“ is not barred by the exceptions from the warrandice, either
“ in the articles of roup, or in the decret of sale, sustains
“ the reasons of reduction : Finds that the feu-charters granted
“ to the defenders are effectual only with regard to the houses
“ and gardens, but ineffectual as to the grass lands, and as to
“ the lands of Point, and decerns.”

On reclaiming petition, the Court adhered. And on second
reclaiming petition, the Lords adhered.

These interlocutors having been brought by appeal to the
House of Lords, their Lordships were pleased to affirm the
same.

For the Appellants, *Wm. Adam, Ar. Fletcher.*

For the Respondents, *Sir Saml. Romilly.*

NOTE.—Unreported in the Court of Session.

(Reduction of Contract and Decreet Arbitral, &c.)

Major-General ROBERTSON of Lude, . . . *Appellant* ;
JOHN, DUKE OF ATHOLL, *Respondent.*

House of Lords, 20th April 1815.

REDUCTION—DECREE ARBITRAL—RELEVANCY.—A reduction was
brought of a contract, a decree arbitral, judgment of the
Court of Session, which pronounced in terms of the decree
arbitral, and a judgment of the House of Lords. Held that
no relevant grounds in law had been stated for reducing these.

The appellant's father, it was stated, had, previous to his
death, and subsequent to the judgment in the House of
Lords in the previous appeal in reference to the same subject
of dispute (*vide ante*, vol. iv. p. 54), recovered some additional
evidence, which, as was alleged, brought more distinctly to
light the circumstances under which the deed or contract of
1716 was granted ; and he was, therefore, advised to bring a
new action of reduction of that deed or contract, and of the
decret arbitral following upon it in 1761, as well as of the
judgments of the Court of Session and House of Lords pro-
nounced thereon.

This action of reduction stated as reasons for so reducing
these, *inter alia*, that “ the said contract is not only unjust and
“ unfair in itself, but was brought about by *force and com-*