entail can take up a part of that estate as superior, and yet attempt to shake himself loose from the obligations incumbent on him as superior towards his vassal."

The case of *Lennox* v. *Hamilton* is of even closer application. There by the original feu charter made in 1737, and granting lands and teinds, the superior bound himself to warrant the feu right from "all future augmentations of ministers' stipends that might affect the teinds above disponed." A charter of confirmation was granted by the superior in 1778 to a disponee of the original vassal, which declared this general confirmation to be as valid and effectual to all intents and purposes as if the said dispositions and instruments of sasine before mentioned had been hereinbefore *verbatim* inserted. In this charter the superior's obligation to relieve the vassal from augmentations of stipend was omitted, and the vassal was held bound to relieve the superior from all ministers' stipend. A subsequent charter to the same effect was granted in 1815, and with the same omission. And the vassal was held bound to the same extent as with respect to the charter 1778. In 1798 the lands and teinds came by progress through a variety of singular successors, none of whom entered with the superior, to the pursuer's ancestor, and ultimately, by succession, to the pursuer himself. None of the conveyances in the course of the progress contained a specific mention of the obligations to relieve against augmentation, but all of them contained an assignation to the writs and evidents of the lands, with the whole clauses of warrandice, and other clauses therein contained. The pursuer, who was a singular successor in the feu, brought an action of relief against the superior, founded upon the obligations in the original charter, and it was held, that he was entitled to recover. One of the grounds for sustaining his right was, that the obligation sued upon formed part of the original feu charter, and that it could not be held to be discharged by its having been omitted in the subsequent charters by progress granted by the superior. Lord Fullerton said, "The superior feued out the lands, and made the obligation to relieve from augmentations a part of his obligation as superior. So that, when the vassal came to sell, he must be held to have substituted the purchaser for himself in that original contract, and thus brought every subsequent acquirer in direct connexion with the superior in relation to the obligation of relief. There is good ground for holding, that such an obligation would go with the lands, and that the purchaser would be entitled to insist, that the superior should repeat it in any new charter."

These cases seem to me to furnish ground for the distinction upon which this case may be decided. When an absolute disposition of teinds is made with an obligation to relieve from burdens, this must necessarily be collateral, and therefore personal, because there is no subsisting relation in the teinds between the parties. But where the superiority is reserved, and the *dominium utile* only transferred, the obligation originating with and being annexed to the feudal relation at the time of its creation, enters into and forms part of its original constitution, and so passes to each vassal as an intrinsic condition of the subject.

After careful consideration, I have arrived at the same conclusion with my noble and learned friend on the woolsack, that this is a case in which the obligation in question is one of the legal conditions of the feudal grant, and that the interlocutor of the Court of Session is therefore right, and ought to be affirmed.

Interlocutors affirmed with costs.

For Appellant, Loch and Maclaurin, Solicitors, Westminster.—*For Respondents*, Connell and Hope, Solicitors, Westminster.

MARCH 27, 1863.

The EARL OF FIFE, *Appellant*, *v.* The Honourable GEORGE SKENE DUFF, *Respondent.*

Entail—Registration—Statute 1685, c. 21—Sale—*X purchased lands, and, while holding them on a personal title, executed in* 1721 *a deed of entail, containing, with power to revoke, the usual clauses of an entail, excepting procuratory of resignation, precept of sasine, and obligation to infeft. Thereafter he made his right to the lands real, by titles containing no reference to the deed of* 1721. *He died leaving issue, two daughters, in a litigation between whom, it was determined by the Court, in* 1725, *that the deed of* 1721 *had not been revoked. The daughters thereafter made up titles, and were infeft in the lands as heiresses portioners; and in* 1728 *they disponed the lands, in implement of the deed of* 1721, *to the oldest daughter of the entailer, as heiress of entail, and to the substitute heirs mentioned in the deed. The deed of* 1728 *contained*

a procuratory of resignation, in virtue of which it was feudalized, and became part of the progress of titles under which the lands were held down to 1860; *but it was not registered in the Register of Entails. The deed of* 1721 *was registered. In an action at the instance of the heir of entail in possession against the substitutes:*

HELD (affirming judgment), *That it was not necessary, that the original deed of entail entering the register, should contain executorial clauses making it capable of feudalization; that the requirements of the Statute* 1685, *c.* 21, *were satisfied by the deed of* 1721 *having been recorded; and that the entail of the lands was not rendered void by the deed of* 1728 *not having been recorded.*[1]

On appeal by the Earl of Fife, (the grounds of which, and the respondent's pleas in answer, are set forth in the report, *ante*, p. 1086; 33 Sc. Jur. 714,) the House of Lords pronounced the following order:—"*Die Veneris*, 19 *Julii*, 1861.—After hearing counsel," etc., "Ordered, that the cause be and is hereby remitted back to the said 'First Division of the Court of Session in Scotland,' to review generally the interlocutor complained of, with an instruction to the Judges of that Division to order the same to be argued *viva voce* before the whole Judges, including the Lords Ordinary, and to report their opinions thereon to this House; and this House does not think fit to pronounce any judgment upon the said appeal until after the said interlocutor shall have been so reviewed, and the opinions thereupon shall have been reported according to the direction of this order."

On the cause returning to the Court of Session, it was heard on the 17th, 18th, 19th, and 20th December 1861, before all the Judges, excepting Lord Mackenzie, who was absent from indisposition, and an opinion was returned by their Lordships, in the result, supporting the interlocutor of the First Division appealed against.

The Solicitor General (Sir R. Palmer), and *Anderson* Q.C., for the appellant.

Mure and *Kinnear* for the respondent.—At the re-argument of this case, the same authorities were cited as in the former argument, (see *ante*, p. 1086,) and also the following—*Gordon* v. *MacCulloch*, M. 15465; *Paton* v. *Renny*, 13 S. 511; *Turnbull* v. *Newton*, 14 S. 1031.

Cur. adv. vult.

LORD CHANCELLOR WESTBURY.—My Lords, at the time of the execution of the deed of settlement of 1721, Major Skene was possessed of a personal title only in the lands of Carraldston. By the disposition made in his favour by Sir George Stewart in August 1721, the Major became the assignee of an unexecuted procuratory of resignation by virtue of which he might have feudalized the disposition contained in the settlement of 1721. He did not do so, but on the contrary, in 1723, he exhausted this procuratory of resignation by expeding a crown charter of resignation of the lands and barony of Carraldston, under which he took infeftment, and made up a complete feudal title in favour of himself, his heirs and assignees whomsoever. In this charter no mention whatever is made of the settlement of 1721. It was contended, in the year 1725, after the death of Major Skene, that by this proceeding he intended to exercise the power of revocation contained in the settlement of 1721. But the contrary was decided by the Court of Session, and that decision, which must be treated as final, is of great importance in the present case, as it follows from it that the deed of 1721 was still a valid disposition of the personal fee.

It is true, that the settlement of 1721 did not contain any procuratory or precept of sasine, or express any obligation to infeft, and that the only means of making up a feudal title which it gave was the assignation of Grandtully's procuratory of resignation, and that, after that procuratory had been exhausted by Major Skene's acts, in making up a feudal title in favour of himself, his heirs and assignees, the settlement of 1721 was left without any means, *in gremio*, of feudalization. The appellant, therefore, contends that, at the *punctum temporis* of the registration of the deed of 1721, it was no longer a disposition or deed of tailzie, but had been reduced to the character of a mere contract or obligation, and had, therefore, lost the capacity of being registered under the Statute, or of being made the basis of the feudal investiture. This argument is not, in my opinion, well founded.

At the time of the execution of the settlement of 1721, it contained the means of obtaining a feudal title, and was without doubt (for it is so settled by authority) a disposition capable of being registered in the Register of Tailzies under the Act of 1685, and it retained the character and quality of a present dispositive act, notwithstanding that the procuratory was used by Major Skene in making up a fee simple title.

The settlement of 1721 still remained effectual as a disposition of the personal fee, although the parties entitled under it would be obliged to resort to some other mode of obtaining a feudal tradition of the subject.

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[1] See previous reports 23 D. 657; 24 D. 936; 33 Sc. Jur. 321, 714. S. C. 4 Macq. Ap. 469; 1 Macph. H. L. 19; 35 Sc. Jur. 424.

It must be recollected, that it is a settled point, that the deed of 1721 remained unaffected by the acts done in 1723. And it is therefore clear in law, that after the death of Major Skene the heir of tailzie under the deed of 1721 had a right to call upon the heirs general of the Major to complete their title by service and entry, and afterwards, either to resign *propriis manibus*, or to grant a procuratory in favour of the heir of tailzie under the settlement of 1721.

On the refusal of the heirs general, the heir of tailzie claiming under the settlement of 1721 would have been entitled to obtain either a personal decreet for conveyance, or a judicial conveyance by means of a decree of adjudication in implement.

It is a mistake to treat the deed of 1721 as being reduced to a contract to make a disposition. It remained what it originally was, an actual, immediate conveyance, giving the right to, and capable of receiving, feudal investment, and consequently possessing the elements of a habile entail.

But it is further contended by the appellant, that the deed of tailzie, to be a good entail, under the Statute, must be the basis of the feudal investiture, and must itself enter the feudal progress.

I have been unable to find any direct authority in support of these propositions. It is undoubtedly true, that to make a good deed of entail under the Statute of 1685, all the fetters and conditions of the original deed of entail, as contained in a deed of tailzie, which has been duly recorded in the Register of Tailzies, must appear in the deeds which make up the feudal tradition or investiture. And the reason is plain, because onerous third parties, that is, creditors or purchasers, if acting *bonâ fide*, and without notice, might otherwise rely upon the feudal title. This, however, is a very different thing from the proposition of the appellant, who insists, that the registered deed of tailzie must be a deed that enters directly into the progress of the feudal titles—a proposition which cannot, I think, be maintained.

The question, therefore, would seem to be reduced to the inquiry, whether it appears on the face of the deed of 1728, that this prior deed of 1721 is the original deed of tailzie, and that all the conditions of the tailzie contained in this latter deed are set forth in the deed of 1828.

It must be remembered, that the heirs of Major Skene were his two daughters, of whom the eldest, Elizabeth, was heiress of tailzie under the settlement of 1721, and that the two daughters had been duly entered with the superior as heirs portioners, and took infeftment as such prior to the deed of 1728, which was afterwards executed by the heirs portioners, for the purpose of completing the title of the eldest heiress of tailzie to the personal fee under the settlement of 1721.

Accordingly, in the deed of 1728, Elizabeth, the daughter, is described as heir of tailzie to her father, and the decreet arbitral is recited, by which the heirs portioners are decerned to implement and complete the disposition and tailzie granted by their father; and the dispositive clause proceeds upon the narrative, that the heirs portioners were willing to implement the disposition and tailzie above mentioned, granted by the said Major George Skene upon the 24th October 1721, registered in the Particular Register of Tailzies upon the 6th January 1725, and in the Books of Council and Session. The fettering clauses and conditions of the deed of 1721 are then inserted in the procuratory of resignation which follows in the deed of 1728, and which at the end declares, that the heirs of tailzie "shall enjoy the said lands and estate by virtue of the said tailzie, (that is, the settlement of 1721,) and infeftments, rights, and conveyances thereupon, and by no other title whatsoever."

The means of feudalizing the settlement of 1721 by a new procuratory of resignation were, therefore, supplied by the deed of 1728.

The estate of the heiress in tail, Elizabeth Skene, remained personal during her life, no use having been made of the procuratory. But on her death her son, Sir George Skene, having taken up his mother's personal fee by general service, exercised the procuratory of resignation granted by the deed of 1728, and obtained a charter of resignation, by virtue of which he was feudally infeft, and the restrictive clauses or fetters of the entail of 1721 are set forth *verbatim* in the charter and the following instrument of sasine, and therefore entered the feudal progress.

Some objections were made in the Court below to the sufficiency of the statement of the restrictive clauses of the deed of 1721 in the procuratory of resignation contained in the deed of 1728, and in the charter and instrument of sasine of 1757. But they were scarcely insisted on by the appellant in the last argument at the bar of this House, and they appear to me to be fully answered in the last collective opinion of the Judges of the Court of Session.

I cannot, therefore, entertain any doubt as to the propriety of affirming the decision of the Court of Session, and dismissing the appeal, with costs.

LORD CRANWORTH.—My Lords, the Court decided in 1725, and, it must be assumed, well decided, that the act of Major Skene, in expeding a charter and taking infeftment thereon upon the open procuratories, did not import a revocation or alteration of the tailzie.

This would not have been true if it had converted a disposition into a mere obligation; Elizabeth could not have been served heir of tailzie to her father if there was not a subsisting tailzie. If the tailzie created in 1721 by Major Skene was, at his death, a mere obligation, Elizabeth was a mere creditor, and not an heir of tailzie.

Suppose that Major George Skene, after he had been infeft, had registered the deed of 1721, and then had executed a disposition in the words of the deed of 1728, *mutatis mutandis*, surely there would have been no necessity for a registration of that deed, and if not, then I do not see how his death makes any difference, when his heiresses who succeed him do what he, if living, might have done.

The deed of 1721 was certainly, at the time when it was executed, the original tailzie, and the Court of Session decided, that it was not altered by the subsequent charter and infeftment in 1723.

The irritant and resolutive clauses were inserted in the procuratory of resignation, charter, precept and instrument of sasine, whereby the tailzie was feudalized in the person of George Skene, the son of Elizabeth, and the original tailzie was produced before the Lords of Session judicially.

All the requisites of the Statute have, therefore, been complied with, and I think, that the Judges below have come to a correct conclusion, and that the defenders were properly assoilzied.

LORD WENSLEYDALE.—My Lords, this case, which is very important in a pecuniary point of view, has been subject to more than ordinary discussion and consideration. It was elaborately argued in the First Division of the Court of Session, first, before the Lord Ordinary (Mackenzie), then on a reclaiming note before the Lord President and the remainder of the Court, afterwards on a remit from your Lordships, before all the Judges of the whole Court of Session, with the exception of Lord Mackenzie, (who was absent from indisposition,) and the whole of these Judges, with the single exception of Lord Mackenzie, concurred in the opinion, that the estate in question was well entailed, and all the Lords of Session (with the above exception) joined in a most able, full, clear, and learned statement of the law of Scotland on this subject. This case has since been argued at much length, and with much ability, for four days at your Lordships' bar, when every authority and argument bearing or supposed to bear on the question was brought under your Lordships' notice.

The duty of the Court of Appeal is not to reverse a judgment, unless it be satisfied that it is clearly wrong. Though the Appellate Court may entertain a doubt on the question raised, that is not enough; the onus lies on the appellant, to shew the Court of Appeal, that the judgment is erroneous. I am clearly of opinion, that this has not been done in the present case, in which the judgment impeached is brought before us supported by so extraordinary a weight of living authority. After giving the subject all the consideration in my power, I must say, that it appears to me to be a right judgment, and the doubt raised in the course of discussion ought not to have effect.

The appellant contended, *1st*, that the deed of 24th October 1721 by Major George Skene, relating to the lands of Carraldston, was not a valid tailzie, and *2nd*, that, if it was, it was done away with by Major Skene in February 1723 obtaining a crown charter of resignation, and taking an infeftment thereon on the open procuratory assigned to him.

To consider this objection first, it is enough to say, that the Court, on the 31st July 1725, decided, that the completion of a fee simple title in the person of Major Skene did not imply a revocation of the deed of entail. They held, that the deed of 1721 had not been revoked or superseded by Major Skene. It still was to have effect, and regulated the right of succession.

The first question then remains, Was that deed a valid tailzie?

It is argued for the appellant, that it was nothing more in effect than a bond or obligation to entail the lands mentioned therein, and no more. That seems to have been the impression on Lord Mackenzie's mind. On the other hand, the rest of the Judges, being all the other Judges of the Court of Session, were clearly of opinion, that the deed of tailzie of 1721 was not a mere contract or obligation to make a tailzie in future, but was an actual disposition of the land, and if it was so originally when made, it certainly was not converted into a mere obligation or executory contract by Major Skene completing his title in the year 1723.

The reasons given by the Judges in their unanimous answer to your Lordships in the remit are quite satisfactory to my mind. The instrument of 1721 operates as a tailzie, and is properly recorded as such in the Register of Tailzies pursuant to the Statute 1685, chap. 22.

But to give the tailzie full and complete operation it required to be feudalized. That could not be done by virtue of the unexecuted procuratory of resignation and assignment thereof, because Major Skene made use of it to complete his own title in 1723, and it was thenceforth put an end to. But the tailzie was capable of being feudalized in another way, and the reasoning of the Judges satisfied me, that it was properly feudalized, and the feudal investiture properly completed under the deed of 1728, after Elizabeth and Jane Skene had been infeft in 1725 by a deed expressly framed for implementing the disposition in the tailzie in 1721, and in supplement of the want of a resignation therein. Afterwards, George Skene, in February 1757, at length completed the feudal title to the entailed land by infeftment. I am satisfied, that George Skene thus became entitled to the estate under the tailzie of 1721 as heir in tail.

But then it was insisted on the part of the pursuer, as I understand, that to constitute a sufficient deed of tailzie the instrument should contain in itself *in gremio* the means of feudalizing

which the tailzies of 1721 did not, after the open procuratory was done away with by being acted upon for a different purpose, and that the tailzie was therefore to be considered as deprived of all the means of making it effectual, and thus became entirely inoperative.

It is certainly more regular and usual, that the deed of tailzie should itself contain the means of making itself effectual in itself, so as to form a chain in the title. But the Lord President, on the first hearing of the case, gives his opinion, that no authority is to be found for such a proposition, and the united opinion of the Judges is to the same effect, and none is cited before us; and, therefore, however reasonable such a rule might be, I am satisfied this objection ought not to prevail. Therefore, my Lords, I entirely concur in the motion of my noble and learned friend on the woolsack.

LORD CHELMSFORD.—My Lords, the question to be decided in this case is, as to the validity of a sale of certain lands, which depends upon whether they were under an entail by a disposition dated 24th October 1721, and registered in the Register of Tailzies.

The appellants contended, that no tailzie was created by the disposition of that date, as it was never perfected by feudalization; that till this was done it existed merely as an obligation to be enforced against the heirs of the disponer, and that it was superseded by a disposition executed on the 5th and 26th June and 8th July 1728, which having been feudalized became the real and only entail.

The ground upon which it is contended, that the deed of 1721 was not a complete entail is, that it did not contain within itself the means of feudalization, having no procuratory of resignation, but only an assignment of a procuratory contained in a disposition of the lands from Stewart of Grantully to Major Skene the disponer in the deed of 1721, and that Major Skene having in 1723 obtained a crown charter of resignation in favour of himself, and his heirs whatsoever, and taken infeftment upon it, had exhausted the assigned procuratory of resignation, and that a new warrant was necessary in order to effect feudalization by infeftment, as contemplated by the deed of 1721.

On the death of Major Skene in 1724, leaving the two daughters, Elizabeth the eldest expeded a general service as nearest and lawful heir of tailzie to her father under the deed of entail of 1721. The second daughter, Jean, expeded both a general and a special service to her father as one of the two heiresses portioners, on the ground, that Major Skene by expeding the crown charter in 1723 revoked the deed of entail of 1721. This dispute between the daughters led to the case of *Skene* v. *Skene*, in which it was decided, that the act of Major Skene in expeding a charter and taking infeftment thereon did not import a revocation or alteration of the tailzie.

The language of this decision is only consistent with the opinion of the Judges, that the deed of 1721 was an actual tailzie, and not a mere obligation to entail, for the words "revocation or alteration of the tailzie" are inapplicable to a mere obligation. There was, therefore, a good entail created and registered, but it was incomplete, and required to be implemented by infeftment. The heiress was desirous of making up the title and giving effect to the provisions of the deed of 1721, and the two sisters, with the consents of their husbands, entered into a submission to two advocates to determine the proper mode of completing the entail. That this was the object of the reference, and not to settle any dispute between a fee simple title and a tailzied title, appears to me to be shewn by the recital in the deed of disposition of 1728, which states, that the decreet arbitral, proceeding upon a submission, decerned and ordained Elizabeth and Jean and their husbands, all with one consent, "towards implementing and completing the disposition and taillie granted by the said Major Skene," to grant, etc., a disposition of the lands in question. The deed itself shews throughout, that the daughters did not intend by it any new or original disposition, but, that it was executed towards implementing and completing the disposition and tailzie of 1721, and in supplement of a want of procuratory of resignation therein, and in obedience to the decreet arbitral. For, after disponing according to the order of succession in the deed of 1721, it provides, that the series of heirs are to be subject to "the express reservations, conditions, provisions, restrictions, limitations, burdens, powers, faculties, and clauses, irritant and resolutive, specified in the said disposition and tailzie," and that the heirs of tailzie above mentioned shall enjoy, bruik, and possess the said lands and tenements by virtue of the said taillie, infeftments, rights, and conveyances to follow thereupon, and by no other right or title whatsoever.

Procuratory of resignation in this deed was not executed by Mrs. Skene in her lifetime. But on her death, her son, George Skene, took it up by expeding a general service as heir of tailzie and provision to his mother, and ultimately, iu 1757, he completed the feudal title by infeftment.

It is insisted, on the part of the appellants, that the deed of 1728 is the only entail; that this is what was feudalized by George Skene; and that, this deed not having been recorded in the Register of Entails, it was deprived of all efficacy by the Statute of 1685.

A great part of the argument for the appellants is founded upon the deed of 1721 being not an actual entail, but merely an obligation. It was contended, that the Act of 1685 allowing an entail of lands to be available against purchasers and creditors, only where the irritant and

resolutive clauses are inserted in the procuratories of resignation, shews, that the deed of 1721, not containing a procuratory, is not a tailzie of the lands but a mere obligation. This point, however, is disposed of by the case of *Skene* v. *Skene*, already mentioned. The register of the deed of 1721 contains all that is required to be recorded. The Act does not say, that a procuratory of resignation must be contained in the deed to render it valid, but only, that the irritant and resolutive clauses must be inserted in procuratories of resignation, and no authority has been cited to shew, that in order to constitute an entail, a procuratory must be inserted in the deed creating it. It is true, that until such an entail has been completed by sasine, it is exposed to the danger of being defeated by a disposition of the lands to third persons by the heir, or by an attachment by his creditors. But until the heir divests himself, or is deprived of the lands, the entail may be completed either voluntarily or by adjudication in implement.

Some stress was laid in the argument upon the circumstance of Elizabeth having been a substitute in the original deed of 1721, and being made institute in the deed of 1728. It was contended, that this was such a deviation from the former entail, (the fetters of that entail no longer applying to her,) as to shew, that the deed of 1728 constituted a new and original entail. But this argument appears to be unsound ; and Lord Curriehill, who adverts to it, gives instances to shew, that Elizabeth, although advanced in her position in the entail, is still subject to its conditions in her original character of heir of entail.

It appears to me, therefore, that the appellants have failed to establish any satisfactory ground of objection to the interlocutor appealed from ; that the deed of 1721 was the original tailzie duly registered under the Statute of 1685 ; that the whole object of the deed of 1728 was to complete the imperfect title under the former deed by feudalization ; and that this was ultimately effected by the charter which was expeded by George Skene the heir of Elizabeth, which proceeded upon the procuratory contained in the deed of 1728. I agree, therefore, that the interlocutor ought to be affirmed, and the appeal dismissed with costs.

Interlocutors affirmed with costs.

For Appellant, Theodore Martin, Solicitor, Westminster. — *For Respondent*, Connell and Hope, Solicitors, Westminster.

APRIL 16, 1863.

EARL OF KINTORE, *Appellant*, *v.* LORD INVERURY and Others, *Respondents.*

Entail—Fetters—Defective Irritant Clause—Words of Reference—*A deed of entail in the irritant clause specified some specific acts, and ended with the words "or any acts contrary to this entail."*

HELD (affirming judgment), *That these words impliedly included the contracting of debts, and therefore the entail was not defective.*

Another deed in the irritant clause ended with the words "or in any one of the several particulars above mentioned."

HELD (affirming judgment), *That this impliedly included a particular left out in the irritant clause itself, and therefore the entail was not defective.*[1]

The irritant clause in the deed of entail under which the Earl of Kintore held the estate of *Kintore* was thus expressed :—"And if the said William Lord Inverury, and the other aires male or female named in the taillie, or their aires, shall contravein the premises, then, and in that case, all the saids venditiones, alienationes, dispositiones, infeftments, alterationes, infringements, bonds, tacks, obleidgements, and all other crymes, treasones, deeds, and acts done in the contrair of this present taillie and provision, shall be null and voide in themselves *ipso facto* without the necessity of any action or sentence of declarator thereupon."

The irritant clause in the deed of entail under which the Earl of Kintore held the estate of *Haulkerton*, was as follows :—"Declaring hereby, that if the said Anthony Adrian Earl of Kintore, or other heirs male of the body of the said deceased Anthony Earl of Kintore, or any of the other heirs or members of entail above mentioned, substituted to them, shall act and do in the contrary with respect to altering the order of succession, selling or contracting debts, granting leases, suffering adjudications to be deduced, or in any one of the several particulars above

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[1] See previous reports 23 D. 1105 : 33 Sc. Jur. 554 ; 661. S. C. 4 Macq. Ap. 520 : 1 Macph. H. L. 32 : 35 Sc. Jur. 455.