cause, as upon the 25th March 1752, when the money was received by Boyd; and it is further ordered that the Court of Session do give the proper directions for carrying this judgment into execution.

1763.

BREBNER v. HALIBURTON, &c.

For the Appellant, *Alex. Lockhart, R. Mackintosh.*

For the Respondents, *C. Yorke, Al. Wedderburn.*

1764.

THE EARL OF ABERCORN, . . . *Appellant;*
ANDREW WALLACE of Woolmet, Esq., W.S., *Respondent.*

THE EARL OF ABERCORN v. WALLACE.

House of Lords, 25th January 1764.

LEASE of COAL—CLAUSE AS TO LEVEL.—Held, that a clause in a lease of coal, by which it was agreed that either party was to have the power of communicating the level of the said coal to any neighbouring coal works, did not cease or determine with the lease, but continued so long as the lessee continued to possess a right and interest in the neighbouring coal-work.

A lease of coal was granted by the appellant to the respondent's brother-in-law, in which there was the following clause: "And it is hereby declared, that it shall be in the power of "either parties, or their foresaids (if they shall hereafter find "it necessary), to communicate the level of the said coal to "any neighbouring coal-works: Providing always, that they "be obliged like as they hereby bind and oblige them and "their foresaids, to submit to arbiters, to ascertain the consi-"deration to be paid by any one of the said parties to the "other on that account; upon payment whereof, both the "said parties are hereby obliged to consent and agree to such "communicating reciprocally."

Immediately follows the clause whereby "John Biggar "(the respondent's brother-in-law), binds and obliges him "and his foresaids, to leave a sufficient chinny wall between "the Duddingston coal and those of the neighbourhood; and "if he and his foresaids shall at any time take the water from "the corn-mill (of Duddingston), so that there shall not "remain a sufficiency for working the said mill regularly, in "that case, he shall either satisfy the tenant of the corn-mill "for his damages, or shall take the said mill at the same rent "it is then let at."

1764.

THE EARL OF ABERCORN *v.* WALLACE.

The lease concluded with this clause: "And it is hereby "mutually agreed on and declared, that though the said "coal should wear out during the continuance of this "tack, yet, notwithstanding thereof, the present tack shall "subsist, in so far as extends to all the other particulars "above set (separate from the coal), and whole tack duties, "and other prestations stipulate thereanent, in the same "manner as if the tack of the coal had not been compre-"hended herein."

Some years after, Mr Biggar, the lessee, began to carry on a level in one of the seams, or veins, of the Duddingston coal, which, after his death, was continued by Andrew Wallace, now of Woolmet, his brother and successor. (the respondent), with the avowed intent of communicating the benefit of this level, not only to the neighbouring colliery of Niddry, of which he obtained a lease, but to all the collieries, however remote, that could be benefited by it, and without any regard to the term limited by the lease before recited.

In 1755, the appellant being informed of the respondent's intentions, soon after applied to the Court of Session for a suspension or stop of the work, and likewise brought an action of declarator, to have it found and declared, that the lessee's right of communicating the level of the Duddingston colliery was limited to the terms of the lease, and to the collieries next adjacent to those of Duddingston.

The appellant contended, 1st, that the privilege granted to the lessee must be understood as relative to the lease, and could not subsist any longer than the term to which it was limited, and could not be construed, as the respondent contended, into a perpetual right of servitude.

2. That this privilege of communicating the level, could not be extended further than to *the next adjacent or co-terminous collieries*, such as those of Brunston, or the colliery of Niddry. That the words, "any neighbouring coal works," contained in the lease, if taken in this sense, clearly established the extent of privilege; but if they are extended further, there is no knowing where they shall stop.

March 6, 1761. The Lords first pronounced this interlocutor: "Find, that "by the conception of the tack in question, it is competent "to either party, the pursuer or defender, to communicate "the level of the Duddingston coal to any neighbouring "coal-work, even though such neighbouring coal-work is not "immediately adjacent to the Duddingston coal; the party "who communicates the said level being liable to pay to the

"other party such valuable consideration for his consent, as "shall be ascertained by arbiters mutually chosen," &c.

On further petition, the Lords pronounced this interlocutor: "Find that, the communication of the level being "granted during the currency of the tack by the lessee, to "a neighbouring coal work, is not determinable by the term "of the tack, but that the same may subsist for the use of the "lessee and his heirs, so long as they shall continue to have "right or interest in the neighbouring coals to which the "level may be communicated, as the said neighbouring coals "are ascertained by the interlocutors of the 23d December "1760, and 6th March 1761."

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

After hearing counsel,

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

For the Appellant, *Thos. Miller, Thos. Sewell.*

For the Respondent, *C. Yorke, Al. Forrester.*

ARCHIBALD and JAMES CANISON, . . *Appellants;*

DAVID MARSHALL, ... *Respondent.*

House of Lords, 27th January 1764.

REDUCTION—FORCE AND FEAR.—A reduction was raised of certain deeds impetrated from the respondent's mother, under the threat that the deed granted in her favour by her father was forged, and that he could procure them to be hanged for it, whereby she, with consent of her husband, was induced to grant a disposition of the estate left her by her father, and also to execute a renunciation of her right: Held these deeds invalid and ineffectual, and reduced accordingly.

William Weir was proprietor of one half of the estate of Sunnyside, and an action of reduction was brought by the respondent, as heir in general to his mother, Anne Weir, or Marshall, against the appellants, to set aside a disposition executed in 1736, by his mother, with his father's consent,