at that time cancelled. My Lords, it comes before the Court in the shape of a mutilated instrument;—having the shape of a mutilated instrument, the question for consideration is, with what intent was that mutilation made? If it was made with an intention that the instrument should have no longer effect, then it must amount to cancellation; and, taking all the circumstances together, it does seem to be clear that it was the intent of the testator, that, by tearing off the seal from the instrument, that instrument should no longer have effect as a disposition of his property, because it no longer had that solemnity which he himself had imposed originally to it. I therefore concur in what has fallen from the Noble Lord.

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SHAWE, LE BLANC, and SHAWE,—J. CHALMER,—Solicitors.

(*Ap. Ca. No.* 38.)

W. and R. RUSSELL and W. MOFFAT, Appellants.—*Copley*—*Pollock.* SHANNON, STEWART, and COMPANY, Respondents.—*Clerk*—*Cuninghame.*

No. 21.

Shipmaster—Charter-Party—Implied Insurance.—Held (affirming the judgment of the Court of Session,) that where a shipmaster had altered the voyage of a vessel specified in a charter-party, at the request of the freighters, and where the vessel was lost in the course of the voyage so altered, the freighters were, in the circumstances of the case, not liable, as insurers, for the value of the ship; but this without prejudice as to the question of their liability for freight.

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1ST DIVISION.
Lord Gillies.

See Hole 375-9

ON the 3d September 1810, Russell and others of Kirkaldy entered into a charter-party with Shannon, Stewart, and Company of Greenock, by which the former chartered the vessel called the William on a voyage 'from the Frith of Forth to St. 'Johns, Newfoundland, and from thence with a cargo to either 'Lisbon, Cadiz, or Gibraltar, a safe port within the Straits as high 'as Alicant, or to either Greenock or Liverpool.' By the charter-party, Shannon, Stewart, and Co. were to pay the freight of two loadings of the vessel in the course of the voyage, namely, the freight of a cargo of coals from the Frith of Forth to Newfoundland, and of a cargo of fish from Newfoundland, either to a port on the west side of the Spanish Peninsula, not beyond Alicant, or to those ports of Britain above described. A few days after the execution of the charter-party, Russell and others enclosed a copy of it to Robert Graham, the master of the vessel, in a letter of

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instructions, in which they said, 'We refer you to the charter-'party for the terms of settling the freight, &c. as much of which 'you will no doubt remit from these respective ports as you can. 'When you have fulfilled all that is required by the charter, and 'if you discharge in Spain or Portugal, you will use every en-'deavour to procure a cargo or freight to a port in Britain or 'Ireland, preferring one to the west side of this island; but take 'what you consider most advantageous for the ship, and in every 'instance study her interest both in freight and disbursements. 'Do not neglect to write frequently; and, so soon as you have 'ascertained where you are to proceed to on leaving St. Johns, 'advise us, so as we may be able to write you to your port of 'destination, if necessary, and for our government in insurance.' The vessel arrived at Newfoundland on the 21st of October, and, on the 24th, the master wrote to Russell and others that bad advices had been received from Spain and Portugal, and that the party proposing to ship the fish intended, if the vessel could not be sent in safety to those countries, to load for Leith, which he considered a better market than Greenock or Glasgow. On the 30th, the master wrote to the agents of Russell and others that he had begun to load, but his destination was uncertain. In the month of November following, Shannon, Stewart, and Company communicated to these agents that the vessel was to sail with a cargo for Leith; and on the 12th, the master wrote to Russell and others that it had been arranged that he was to sail to Leith; and, on the 14th, he made an indorsation on the charter-party in these terms: 'It is 'hereby agreed between Robert Graham, master of the within-'mentioned brig William, and acting as agent for his owners, 'takes it upon himself to proceed to Leith by the north of Scot-'land, a port not mentioned in this charter-party, on the same 'terms as if direct to the Fairlie Roads,* being the wish of Shan-'non and Company, a branch of the house of Shannon, Stewart, 'and Company, Greenock, the charterers.' The first of the above letters was received by Russell and others on the 1st December 1810, the second on the 4th, and the third and fourth letters on the 6th and 7th of that month. To these letters, however, they made no answer, nor did they intimate to Shannon, Stewart, and Company that they objected to the proposed alteration of the voyage. On the 8th of December they wrote to their broker at Leith to get the policy of insurance altered, so as to

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* In the Frith of Clyde.

permit the vessel to proceed to Leith; but from the intervention of a Sunday this could not be accomplished till the 10th. On that day information was received that the vessel had been totally wrecked on the 6th of December among the Orkney Islands, and the original policy having been held vacated by the underwriters, in consequence of the alteration of the voyage, Russell and others, at the distance of two months thereafter, intimated to Shannon, Stewart, and Company that they held them liable for her value. They, accordingly, soon afterwards brought an action before the Court of Admiralty for that value and the freight stipulated in the charter-party, and they also called the master as a defender. The Judge Admiral, after decerning in absence against the master, and detailing the circumstances, found, 'That although a 'master of a ship might, by strangers in a foreign port, unac- 'quainted with the engagements by his owners, or instructions 'received from them, be understood to be the authorized agent 'of his owners, and entitled to bind them by his contracts, there 'could be no such understanding by persons in a foreign port, 'who were not only acquainted with the contract entered into by 'the owners for the employment of the ship, and the correspond- 'ing instructions to and engagements by the master, but were 'actually parties thereto: That the copy of the instructions to 'Graham (the master) conferred no powers upon him to alter the 'charter-party, but enjoined him to fulfil it, and that the discre- 'tionary powers contained in these instructions were all to act 'after the engagement of the charter-party was fulfilled, and con- 'sequently Shannon and Company having been, through their 'partners in this country, bound by the charter-party, and per- 'fectly aware of its contents, could not consider the master of the 'William, as the agent of his employers, entitled to alter the so- 'lemn contract made by them, and by which his authority to 'make engagements for the ship was restrained: That, there- 'fore, the alteration on the charter-party is void and null; and 'that no notification of the intention to alter the charter-party 'was ever made by Shannon and Company, or by their partners 'in this country, the defenders, to the pursuers,—and that no 'notice of the intention to be relied on was given by Graham till 'his letter, dated 12th of November, arrived on the 7th of De- 'cember; and therefore, that there was no necessity, nor even 'opportunity, afforded to the pursuers for notifying to the de- 'fenders their dissent from the alteration of the charter-party, nor 'could the defenders have been any way benefited although they 'had received such notice: That there are no grounds for hold- 'ing that the pursuers, by endeavouring to cover by insurance

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'being equally divided in opinion, they supersede further advis-'ing of the cause for the opinion of Lord Gillies.' Thereafter, on the 31st of January, (Lord Gillies being on the bench,) they altered the interlocutor, found the letters orderly proceeded, and decerned in terms of the summons of reduction, and of the petitory conclusions therein contained. Shannon, Stewart, and Company having reclaimed, the Court were again equally divided, and Lord Gillies having been called in, they, on the 19th of June 1817,* altered, and in the reduction assoilzied, and in the suspension suspended the letters simpliciter.

Russell and others then appealed to the House of Lords, on the ground, 1. That the master had no power to alter the terms of the charter-party, which had been solemnly executed and acted on by the parties; and, 2. That, in the circumstances of the case, there was no foundation for alleging that they had either homologated the act of the master, or that they had been guilty of negligence in not communicating their dissent from the intended alteration of the voyage. To this it was answered, 1. That the agreement by the master to change the destination of the vessel was within the special powers conferred upon him by the letter of instructions; 2. That, even although he had not possessed these powers, yet, as he was the servant or agent of Russell and others, Shannon, Stewart, and Company could not be made liable for the error or fault of this person, the more especially as it was not alleged that they had either corrupted or deceived him in the performance of his duty; and, 3. That it was entirely attributable to the remissness, and want of punctuality, of Russell and others, when they first heard of a probable change in the home voyage, that any loss at all was sustained. The House of Lords found, 'That, in the circumstances of this case, the defenders Shannon, 'Stewart, and Company were not liable to make good any loss or 'damages sustained by reason of the alteration of the voyage or 'destination of the chartered vessel, as specified in the charter-'party; but this is without prejudice to the question as to 'freight: And it is therefore ordered and adjudged, that the 'interlocutors complained of, so far as they are consistent with 'this finding, be affirmed: And it is further ordered, that the 'cause be remitted back to the Court of Session, to review the 'interlocutors complained of, having regard to this finding, and 'also as to the demand of freight; and after such review, to do 'therein as to them shall appear to be just.'

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* Not reported.

July 27. 1821. *Appellants' Authorities.*—(1.)—Abbot on Shipping, 112. 119; Molloy, 381; Lawes on Charter-Party, 63.

Respondents' Authorities.—(1.)—2. Camp. Rep. 529; 6. Bro. Parl. Cases, 474.

REARDON and DAVIS,—J. RICHARDSON,—Solicitors.

(*Ap. Ca. No.* 40.)

ADDENDUM.

ELIOTT *v.* POTT, ante, No. 5. p. 16.*

LORD CHANCELLOR.—My Lords, there is another case which stands for judgment to-day, which has been argued in two Sessions of Parliament, the case of Sir William Francis Eliott of Stobbs, Bart., appellant, and George Pott, tacksman of the farms of Langside and Penchrise, respondent. There are two appeals. The appellant in the original appeal is the proprietor of an estate called Stobbs in the county of Roxburgh; and an action was brought in the Court of Session to set aside, for a violation of the provisions of the entail, a lease granted by the appellant's father to the father of the respondent Mr. Pott. My Lords, the restrictions which, it is supposed, prohibited the granting of that lease, are found in a deed which is conceived in the form of a bond of tailzie, executed in the year 1719; and it will be unnecessary for me to read to your Lordships the whole of the prohibitory, irritant, and resolutive clauses in that bond of tailzie, as they have been so frequently stated to your Lordships in the course of the discussion at the bar, and so very much observed upon.

My Lords, under this entail the late Sir William Eliott, father of the appellant, entered into possession of the estate. In the year 1790 he granted a nineteen years lease of the farms of Penchrise and Langside, which consisted of between four and five thousand acres of the estate, at the rent of £281. 8s., to Gideon Pott, the father of the respondent. After his possessing the farm four years under this lease, a new transaction was entered into between the parties. On the 20th of March 1794, Sir William

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* This speech was not received till after the case was reported and printed, and is therefore given separately.

granted a new lease of the same farms to Mr. Pott, at the rent of £285, and for a period of seventy-seven years; there was a sum paid as a grassum,—namely, £2904: 15: 9; that is, £2904. 15s. 9d. was paid on the surrender of the lease of 1790, and the granting the new lease for seventy-seven years. Of even date with this lease, Sir William Eliott granted a back bond to the tenant, restricting the rent exigible during the lifetime of him, Sir William, to £200. Sir William died in May 1812; he was succeeded by the appellant, who found himself entitled, only if this transaction should be good, to a rent of £285, for farms which he represented as farms that ought to give a rent of £1500; and then he commenced the present action for reducing the lease as an infringement of the restrictions of the entail.

My Lords, the action came first before my Lord Gillies, and the respondent's defence consisted of two propositions: He first maintained that the irritant and resolutive clauses of the entail were so loosely, so inaccurately, and so incomprehensively worded, as to render the entail unavailable against third parties contracting with the heirs in possession of the estate; and, secondly, that even supposing the irritant and resolutive clauses to be effectual to the extent of the acts of contravention therein enumerated, they could not invalidate the lease under discussion, because that enumeration, while it mentioned the act of disponing, omitted that of alienating, under which alone, in the absence of any express limitation of the power of leasing, it was insisted that the lease could be struck at as contrary to the restrictions of the entail. The Lord Ordinary, having heard the counsel for the parties, repelled the reasons of reduction, assoilzied the defender from the conclusions of the action, and decerned. This was upon the 27th of January 1813; so that in effect, by this interlocutor, whatever ground there might be for saying that a lease or alienation was subject to objection, he was of opinion there was no ground for sustaining that allegation.

Upon the 19th of February 1813, a short representation was given in by the appellant, and refused, without answers. Upon the 17th of December 1813, after another representation had been given in, the following interlocutor was pronounced: 'The Lord 'Ordinary having considered this representation, with the an-'swers thereto—Finds that the lease in question having been 'granted in consideration of a grassum, and for a period of se-'venty-seven years, is to be considered as an alienation; and finds 'that alienations are prohibited by the entail of the estate of 'Stobbs; but finds that the irritant and resolutive clauses in the 'same deed of entail contain no reference to the specific prohibi-

'tion against alienating, such as is necessary to render the same 'effectual against third parties.' It is unnecessary for me to state, in the presence of your Lordships, that in order to make the prohibition effectual against third parties, there must be not only a clause prohibiting the thing to be done, but a clause rendering it null and void, and a clause resolutive in its nature, so that all the three clauses must strike the act complained of; and if the one does strike the act complained of, and the others do not, it would not be effectual as against third parties. This interlocutor was submitted to the review of the Court, and having been followed by answers, their Lordships pronounced the following interlocutor: 'The Lords having resumed consideration of this pe-'tition, and advised the same with the answers thereto, they refuse 'the prayer of the said petition, and adhere to the Lord Ordi-'nary's interlocutor reclaimed against; but find the petitioner not 'liable in the expenses of process.'

My Lords, there have been two appeals presented to your Lordships, one of them against that part of the interlocutor which represented the lease in question as an alienation, as having been granted in consideration of a grassum, and for a period of seventy-seven years; but with reference to that appeal, it appears now not necessary to take much notice of it, because, by many of your Lordships' decisions of late, such a lease has been considered as an alienation; and therefore, if the prohibitory, irritant, and resolutive clauses are sufficient to prohibit alienation, they must now, under the effect of your Lordships' decisions, be taken to prohibit such a lease as an alienation. With respect to the other appeal, the substance of it is, that if the Court held the bond of tailzie to be intelligible, they were not authorized in so holding it; and again, if they held it to be intelligible, but that the act which is to be taken as the alienation was not struck at by all the clauses, that they are wrong in so considering it, because the word *disponing* being in the other clauses, whilst the word alienate, and so on, is only in the prohibitory clause, that that word *disponing* is in law a word which includes in it all that would be expressed by *alienating*; that it is not to be understood as technically meaning merely disposition, but that it will include alienation; and therefore, if a lease for seventy-seven years, with a grassum, is an alienation, such an alienation is struck at by the word *dispone*, as much as it would be struck at by the word *alienate*, if the word *alienate* had been in all the clauses.

My Lords, it is a very remarkable circumstance, that this case has been twice decided by the Court of Session. In the year 1803, it appears from the report I have now in my hand, that

there was a cause in the Court of Session, Sir William Eliott against the Heirs of Entail of Stobbs. Your Lordships will permit me to notice, that being Sir William Eliott against the Heirs of Entail of Stobbs, it was a question inter hæredes; but being a question inter hæredes, instead of being a question as between strangers, does not appear to me to make any difference as to whether the deed of tailzie is intelligible or not; it may make a difference in the question put in another way. My Lords, this case, after stating the deed of entail of the 17th of September 1718, which is the deed of restriction now under consideration, stated that Sir Gilbert made up new titles to his estate, on the footing of this entail, in 1719 and 1720, upon which he and his eldest son were infeft. The entail was recorded in 1724, and Sir Gilbert possessed the lands upon these titles till his death in 1764. He was then succeeded by his eldest son Sir John, who possessed the estate upon the titles made up in his father's lifetime, and died in 1767, being succeeded by his eldest son Sir Francis, who also made up titles in terms of the entail; and, upon his death in 1791, Sir William succeeded, and made up his titles under the entail as his predecessors had done, on which titles he has ever since possessed the estate. In the year 1801, Sir William entered into a minute of sale with Mr. Joseph Gillon, writer in Edinburgh, of a part of the estate. Mr. Gillon suspended the payment of the price on this ground, that Sir William had no power to implement the minute of sale on his part, being restricted from selling by the entail of Stobbs. The bill of suspension was passed of consent. Then there arose another cause. Sir William brought actions of reductions and declarator of the tailzie and subsequent investitures, calling as defenders all the heirs of entail in existence. Your Lordships are aware that there is a mode of proceeding in Scotland which we do not adopt in this part of the United Kingdom; that is, that where persons conceive themselves entitled to certain estates, they bring an action of declarator, when no persons dispute it, against all those who may choose to oppose their claim; and there certainly is a great degree of convenience in this. The Courts of Scotland are very much attached to this mode of proceeding; whereas our Courts of Justice are very much in the habit, the moment they find that the proceeding is to settle a question of any kind which cannot be said strictly to have arisen between the parties, to refuse to give any decision whatever upon it. I believe I may venture to state, on my own recollection in practice, that now and then this House has been called upon to decide in similar cases, and has occasionally decided in similar cases. Formerly contracts used to be made for sales of estates.

Bills were filed in the Court of Chancery for the specific performance of the contracts, the intention and ultimate object being to bring the question before the House of Lords, to get a decision of the House of Lords, which, by the bye, could not bind others, though it would be a great authority as to whether the party had or not the right to sell. This appears to have been put an end to by another mode of proceeding, which began about the time of Smith *v.* Chapman, where Lord Thurlow decided, that if there was a case of considerable doubt with respect to a title, he would not compel the purchaser to take. Mr. Baron Eyre, afterwards Lord Chief Baron, and Lord Chief Justice Eyre, I remember, was a good deal shocked that there should be any such thing as uncertainty in the law, because he was of opinion there could be no such thing as uncertainty in the law; and he did not approve of that decision: But it has since been taken for granted, that if there is serious doubt of the title, whatever might be the law before, the Court will not compel the party to take the title, and so that mode of proceeding appears to have been very much discussed in our part of the kingdom.

It is unnecessary for me to state to your Lordships what the result of this action of declarator is, but in the process it is mentioned, 'Sir William maintained this separate plea, that the entail was ineffectual to prevent a sale, being defective in its various clauses, in support of which,' (and I will read the pleadings to your Lordships,) 'he maintained that the limitations of an entail are not to be extended by inference or implication beyond what is expressed in the entail itself,—(a proposition to which full assent will be given); and wherever these limitations are directed against third parties, as in the case of a prohibition to sell or contract debt, in order to render these effectual against purchasers or creditors, it is necessary that the prohibitory and irritant clauses should be accompanied by a resolutive clause making void the right of the contravener.' Then, my Lords, cases are mentioned. 'The irritant and resolutive clauses, besides, must be precisely applicable to the act of contravention, in order to be effectual against third parties.' Bruce of Tillycoultry's case is mentioned; then they say, 'In the present case, the irritant and resolutive clauses, instead of bearing in general that all the acts of contravention contained in the prohibitory clause shall be void and null, or shall subject the heir to a forfeiture, specially enumerate the various cases to which they are meant to apply.' That would be more accurately put if it was stated, that after the declaration that they are not to contravene in any respect, which is contained in the instrument, it enumerates various cases in

which they are not. 'That in order to render void an act of con-
'travention, it must be done by Sir Gilbert and the heirs,—it
'must be done by the heirs during their respective marriages,—
'and it must be such as to burden or affect the estate, and im-
'pinge or alter the succession. But to enter into a minute of
'sale does not fall under any of the cases enumerated as qualified
'and explained by the irritant clause, in which cases alone con-
'travention of the entail can be effectual against third parties.
'The prohibition to sell, analzie, wadset, dispone, dilapidate, and
'put away the said lands, is most ample; but in the irritant and
'resolutive clauses there is not one word about selling, nor any
'thing which, in sound legal construction, can be held to be equi-
'valent to it.'—My Lords, whether there is any thing which can be held to be equivalent to it, is precisely the question. The only words having the least reference to this prohibition are those in the irritant and resolutive clauses, 'or *who*, whether male or female,
'and I shall dispone the said lands and estate, or any part there-
'of.' Now, the relative *who* refers to the nearest antecedent clause, heirs-female, their husbands and children, none of which Sir William is; at least, if it does not, this clause is so uncertain as to be insufficient for imposing fetters, which can only be done clearly and expressly to affect the rights of purchasers and creditors. Again, the disposition must be granted in concurrence with Sir Gilbert himself, 'who, whether male or female, *and I*;' and it can only take place in case they concur to dispone the estate, but does not take place in any of the other ways by which the estate may be alienated; *e. g.* by a minute of sale. The statute 1685 distinguishes between selling, analzieing, and disponing, as being different modes of affecting property. Selling or analzieing, therefore, by a minute of sale, is different from disponing, and the minute of sale may be completed by the purchaser adjudging in implement. My Lords, I read this, because it appears to me that the substance and marrow of the argument is contained in these pleadings.

On the other hand, the answer appears to me to contain the substance and marrow of all that has been stated at the bar on the other side. The act of 1685, permitting proprietors to entail their property, has prescribed no form of words which shall be essential for carrying the entailer's intention into effect, nor have the decisions of the Court as yet supplied the deficiency. It is only necessary that the clauses should be clearly and distinctly expressed, so that the meaning of the entailer may be carried into effect, without resorting to any constrained or violent construction of the words. In Bruce *v.* Bruce, 15th January 1799, the en

tail of Tillycoultry, among other prohibitions, contained one directed against selling, analzieing, dilapidating, or putting away the foresaid lands or estate. The resolutive clause did not contain a general reference merely to the various prohibitions as the irritant clause did, but proceeded to a special enumeration of the acts of contravention, which would forfeit the contravener's right, thus limiting and circumscribing the effects of the general reference. Among those acts of contravention the whole clause de non alienando was omitted, and no words which could apply to it were inserted. The strict interpretation of entails will probably not be carried farther than it was there. The present question, however, is one very different. On examining the enumeration of cases to which the irritant and resolutive clauses of the estate of Stobbs are meant to apply, the first part of them refers to the prohibitions with regard to the entailer's surname, title, and arms, and with regard to the heirs-female and their husbands and children using the same surname, title, and arms. Then, as the heirs of entail, as well as the entailer, were prohibited from alienating, contracting debt, or altering the succession, the next part of the clause,—quite distinct and independent of the former, and beginning, 'or who, whether male or female, and I shall dispone 'the said lands,'—relates to these last prohibitions. The irritant clause begins with the words, 'And if I or any of the said heirs, 'whether male or female, successive, shall contravene the pre-'mises;' and the remainder is merely a continuation of that sentence. The pronoun *who*, therefore, applies to any of the said heirs; and, particularly when connected with the words 'whether 'male or female, and I shall dispone,' it can relate to no others than the heirs of entail, as the heirs of entail, male and female, and the entailer himself, had been prohibited from alienation. Nor is the irritancy confined to a deed of an heir, in concurrence with the entailer; that depends certainly upon the whole extent and meaning and construction of the clause. The entailer, by the construction of the tailzie, became a liferenter, and no prohibition against him was necessary; and if he had not, he could not have irritated his own deed, or deprived his creditors of the means of attaching his estate, so long as he continued proprietor of it, so that the addition *and I* to the various clauses is unnecessary, and should be held pro non scripto. The intention of the entailer is obvious. Even the clause itself begins thus, 'If I, or any of 'the said heirs.' Afterwards, when *and* is used, it is used as being synonymous with *or*, which, in common language, it frequently is. Again, the irritancy is applicable to a sale of the estate, as disponing is one of the acts specially enumerated,

making this case thus far different from the case of Tillycoultry. Now we come to the words of the clause again. Selling, however, it is said, is not included under the general term to dispone. But these words are synonymous,—they are different modes of expressing the same act, and, together with analzie, are so used by the statute of 1685. Perhaps, of all the terms, sell, analzie, wadset, dispone, dilapidate, and put away, used in the prohibitory clause, *dispone* is the most general, and it is therefore used as an equivalent to them. I need not put your Lordships in mind what this House has found in other cases as to the effect of the word *dispone*. The question which arises is, not whether in many cases the meaning of the word *dispone* may not be to sell; but whether it is so in this case, taken in the way in which it stands here. The irritant clause continues, 'Then, and in any of these cases, not only shall 'all such deeds and contraventions to be done by me and the 'said heirs male or female,'—this first part applying to such prohibitions as are directed against the entailer or the heirs of entail; and then proceeds,—'or any of them, during their respective 'marriages,' comprehending the other class of contraventions as to the name, arms, and title which are to be borne by the heirs-female and their husbands, and which prohibitions are contradistinguished throughout every clause in the entail. All these are irritated, so far as they burden and affect the estate, which last term is sufficient to include the sale in question.

My Lords, Mr. Solicitor-General Blair and Mr. Ross were concerned as counsel in this cause; and the Court of Session were of opinion, which they expressed on the 19th of May 1803, both that this clause was intelligible, and that the word *dispone* in the irritant and resolutive clause was quite sufficient to support the entail. But it has been intimated to us, that we are to consider this a case of collusion. Now, I do not see how that is made out; for unless the Judges were colluding, I must look at it as containing their opinions in 1803. It is said this is not a res judicata between the parties. I agree that it is not a res judicata with respect to the respondent at the bar; but still it is the opinion of the Court of Session upon precisely the same points; and if they were to be of opinion a man cannot sell, they must be of opinion a man cannot buy. The question therefore, upon the whole, appears to be this, Whether the opinion of the Court of Session in 1803, or the opinion of the Court of Session in the present case, is the better opinion? It appears to me to be reduced to two points; namely, whether this deed is intelligible; and if this deed be intelligible, what is the effect of it with respect to the sufficiency of the three respective clauses. Now, my

Lords, it is a very dangerous thing to come to a decision that an instrument is not intelligible, which has been so far the subject of judgment; and though one cannot help seeing that almost every rule of grammar is sacrificed in this deed, yet, if we were to hold this to be unintelligible, I cannot conceive how it can be said to have been satisfactorily determined, unless it was understood. I am of opinion this instrument is an instrument capable of being understood, and that reduces it to the question, what is the effect of the word *dispone*, regard being had to the whole context of this instrument? After the decisions which have been come to upon the word *dispone*, (and your Lordships will pardon me if I presume to say, after what is of infinitely more authority, the great authority to be found in the law of Scotland, antecedent to any such decision as to the effect of the word dispone,) I cannot help stating it to your Lordships, after much consideration of the case, as my judgment, that this word *dispone* in these other clauses is quite sufficient for the purpose of protecting this individual; and unless any of your Lordships are of a different opinion, it does appear to me that this judgment must be reversed.