

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

1764.  


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 THE EARL OF  
 ABERCORN  
 v.  
 WALLACE.  
 June 24, 1762.

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.*

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ARCHIBALD and JAMES CANISON, . . . . .	<i>Appellants;</i>
DAVID MARSHALL, . . . . .	<i>Respondent.</i>

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 CANISON; &c.  
 v.  
 MARSHALL.

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,

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in favour of Alexander Canison, setting forth expressly, that William Weir, deceased, had in his lifetime made a disposition of his whole heritable estate to his daughter, Anne Weir (Mrs Marshall), and her heirs, upon the failure of his son, Robert, and the heirs of his body. That Alexander Canison and his curators, raised a process of reduction and improbation for setting aside that disposition as false and forged, and had threatened to have the respondent's father and mother hanged, as the forgers of it. That being terrified by such unjust and arbitrary threatenings, they were *vi et metu* compelled and concussed to grant the deed in question, without receiving any consideration therefor, and a note of a 100 guineas was also extorted from them; and therefore concluding not only for reduction of that deed *ex capite vis et metus*; but also for repetition of payment of 100 guineas, with interest from 13th March 1736, and for an account and payment of the rents of a half of the said William and Robert Weir's estate for the year 1736, and subsequent years, at the rate of £100 sterling per annum.

The appellants still insisted in their allegations of forgery, which the respondent denied.

Nov. 24, 1762.

A proof was allowed and reported. Upon the result of which the Court pronounced this interlocutor: "Find the  
 " reasons of reduction relevant and proven, and therefore  
 " reduce the disposition granted by Anne Weir, second law-  
 " ful daughter, and one of the two apparent heirs portioners,  
 " and of line of the deceased William Weir of Sunnyside,  
 " with consent of David Marshall, surgeon in Hamilton, her  
 " husband, in favour of Alexander Canison, only lawful son  
 " of the deceased John Canison, town-clerk, Hamilton, re-  
 " nunciation and discharge granted by the said Anne Weir,  
 " with consent of her husband, in favour of the said Alex-  
 " ander Canison, both bearing date the 13th March 1736,  
 " and both ratified by the said Anne Weir, of the same date,  
 " with the instrument of sasine following thereon: as, also,  
 " disposition by the said Alexander Canison, in favour of  
 " James Canison, writer in Hamilton, and Archibald Cani-  
 " son, merchant there, defendants (appellants), dated 10th  
 " April 1749, and instrument of sasine following thereon,  
 " with the charters and infestments obtained from the supe-  
 " riors, in favour of the said James and Archibald Canison,  
 " in so far as relates to the equal half of the heritable subjects  
 " thereby conveyed, which belonged to the deceased William  
 " Weir, and afterwards to the also deceased Robert Weir, his

“ son; and decern and declare accordingly. Find the de-  
 “ fendants (appellants) liable in the expense of process, of  
 “ which ordain an account to be given in; as also in the ex-  
 “ pense of extracting the decree, as the same shall be certified  
 “ by the collector of the clerk’s dues, and decern, and remit  
 “ to the Lord Ordinary, who pronounced the act, to hear  
 “ parties’ procurators on the other conclusions of the libel,  
 “ and to do and proceed therein as he shall see cause.”

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On reclaiming petition the Court adhered.

Jan. 21, 1763.

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, with £100 costs.

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

For the Respondent, *Thos. Miller, Alex. Wedderburn.*

JOHN WALKER, one of the Bailies of Edinburgh, JAMES STUART, THOMAS HOGG, WM. GIBSON, Councillors, and Others,	}	<i>Appellants;</i>
GEORGE DRUMMOND, Esq., Lord Provost, and Others, the Magistrates and Town Councillors of the City of Edinburgh,	}	<i>Respondents.</i>

1764.

WALKER, &c.  
 v.  
 DRUMMOND,  
 &c.

House of Lords, 13th March 1764.

PATRONAGE OF THE CITY CHURCHES.—The rights of presentation to the parish churches of the city of Edinburgh belong to the Lord Provost, Magistrates, and Town Council, as patrons thereof; and the Presbytery of Edinburgh, by their several Kirk Sessions, has no voice in the election or presentation to any vacancies in the parish churches within the city.

The respondents are the patrons of, and have the right of presentation to all the parishes within the city of Edinburgh; and, on a vacancy occurring in 1762, in one of the city churches, they gave a presentation to Mr Drysdale to the vacant benefice.

The appellants brought a suspension and interdict; and