

[M. 15,611.]

1765.

LORD KINNAIRD, - - - - - *Appellant* ;
 HUNTER and Others, - - - - - *Respondents*.

KINNAIRD
 v.
 HUNTER, &c.

House of Lords, 18th February 1765.

RECORDING ENTAILS.—An entail contained no express prohibitions against granting leases, and the heir granted leases of 11, 19, and 38 years' duration: Held, in a reduction of the leases, that they were good against singular successors, the entail not having been recorded, although executed before the date of the act 1685.

REDUCTION of certain leases, one for 19 years, one for 11 years, and one for 38 years, alleged to be granted in contravention of the strict prohibitions of an entail, directed against “selling, alienating, disposing, and dilapidating the said estate, or any part thereof, or to do any act by which the same might be evicted, or otherwise affected, in prejudice or defraud of the subsequent heirs male and of tailzie.” In defence, it was stated, that the entail contained no express prohibitions against granting leases for any number of years, and, therefore, that the heirs of entail were, in this respect, unrestricted. Besides, the entail was ineffectual to protect against such leases, because it had not been registered in terms of the act 1685. The lessees were to be viewed as singular successors, and however valid the unrecorded entail might be as in a question between the heirs of entail, yet it was ineffectual against singular successors. To this it was answered, that the act did not apply to entails executed before the date of the act; but to this it was replied, that it had been settled in the entail of Rothcs, that such entails *Vide supra*. required to be registered.

The Lords pronounced this interlocutor :—“ That the requisites of the act of Parliament 1685, not having been complied with, with respect to the foresaid tailzie, that the same is ineffectual against singular successors, and repelled the reasons of reduction, and assoilzied and discerned.” Nov. 23, 1763.

Against this interlocutor the present appeal was brought to the House of Lords.

Pleaded by the Appellant.—An entail, with prohibitive and irritant clauses, though never recorded in terms of the

1765.

 YOUNG
 v.
 NISBET.

act 1685, is effectual, in any question among the heirs of entail, and will bar all gratuitous deeds, to the prejudice of the subsequent heirs; but the question here is, Whether such an entail is effectual against singular successors, or purchasers for a valuable consideration? In the present case, the act as to recording has been sufficiently complied with, by recording the charter which proceeds upon the entail, and which contains the names of the maker, the heirs of entail, and the description of the lands, and the whole limitations. This ought to be held a sufficient recording, to protect the estate against singular successors. But even if it were otherwise, the entail here having been executed antecedent to the act, that statute regulating registration did not apply.

Pleaded for the Respondents.—It has been finally settled, that the act 1685, as to the registration of entails, applies to those before, as well as those executed after the passing of the act, whether perfected by charter or not. Therefore, not less than the most literal compliance with the requisites of the act can support the restraints imposed by entails.

After hearing counsel, it was

Ordered and adjudged that the interlocutors be affirmed.

For Appellant, *Al. Wedderburn, W. Johnstone.*

For Respondents, *C. Yorke, R. Mackintosh.*

[M. 15,516, et Fac. Col. iii. 359.]

JOHN YOUNG of Newhall, Esq.,	- -	<i>Appellant;</i>
MARGARET, the widow of John Scot Nisbet of Craigentinny, Esq., deceased; CHAMBRE LEWIS, Esq., and THOMAS TOD, Disponees of the said John Scott Nisbet,	-	} <i>Respondents.</i>

House of Lords, 21st February 1765.

ENTAILS—GENERAL CLAUSE—PROHIBITIONS AGAINST SALES.—An entail contained a general clause, prohibiting the heirs from doing any fact or deed in prejudice of the succeeding heirs of entail, but no special prohibition against sales: Held the general clause not sufficient to protect against sales.

IN 1722, the deceased William Nisbet of Dirleton executed an entail, containing strict prohibitory, irritant, and re-