

No. 124. and also that the said pursuer is entitled to hold, possess, and enjoy the whole lands and heritable subjects specified in the said deed of tailzie, and not contained in the said marriage-articles, and that, in fee simple, as heir of line in general served and retoured to his father, as libelled, and to make up and expedite his titles in that character accordingly."

The defenders reclaimed against this judgment ; but, on advising their petition, with the answers, the Court adhered to it,

Lord Reporter, Gardenston. Act. Lord Advocate (H. Dundas) Wight, Ilay Campbell.
Alt. Maclaurin, Blair, A. Abercromby, R. Dundas. Clerk, Orme.

S.

Fac. Coll. No. 97. p. 151.

* * This case was appealed. The House of Lords, 21st May, 1783, " ORDERED AND ADJUDGED, That the interlocutor complained of be reversed, in so far as it finds, that the deed of entail libelled on is effectually revoked by the deed executed by Sir Laurence Dundas on the 14th February 1779 ; and that the cause be remitted back to the Court of Session in Scotland, to carry this judgment into execution."

S E C T. VII.

Act 1685. Cap. 22.

1710. February 24. DR. PITCAIRN, Supplicant.

No. 125.

Dr. Pitcairn presented a tailzie to be registered, made by Sir Archibald Stevenson, his father-in-law. The Lords observed, it was only of a tenement in Niddry's Wynd, and did not think the act of Parliament 1685 intended such mean subjects of property, but was to secure land-estates in the country from going out of the family, and not houses, which may, in a night, be consumed with fire, and nothing but the superficies and area left, which did not deserve irritant clauses to fetter them from alienation. However, the Lords allowed it to be registered in common form, *et periculo petentis*.

Fol. Dic. v. 2. p. 436. Fountainhall, v. 2. p. 572.