

No. 94. ported by words merely contrary to intention, ought not to be sustained in a Court of equity.

“ The Court accordingly decreed.”

Sel. Dec. No. 93. p. 125.

1756. January 28. HOUSTON *against* STEWART NICOLSON.

No. 35.

A clause of entail empowering the heir of tailzie to provide wives or husbands in life-rent to the extent of a third, found sufficient to empower the first institute and next apparent heir jointly to settle a third upon the wife of the said next apparent heir.

Fac. Coll.

* * This case is No. 68. p. 2338. *voce* CLAUSE.

1757. January 19.

The EARL of BUCHAN *against* His FATHER'S CREDITORS.

No. 36.

Personal creditors of an heir of entail, purchasing the real debts affecting the estate, if entitled to apply the rents to pay the personal debts, to the prejudice of the next heir of entail ?

In 1664, Sir James Stuart of Strathbrock executed an entail of his estates of Strathbrock and Kirkhill, containing the usual prohibitory and irritant clauses.

Upon the death of Sir James and his male-issue, the succession devolved upon Katharine Stuart, Sir James' youngest daughter, who had intermarried with Henry Lord Cardross.

At the time this succession opened, the estates stood charged with debts to a considerable extent, which had been contracted by the maker of the entail, and his son the first institute, who was not bound by the prohibitions in the entail ; and these debts were soon after made real against the estate by adjudications, and charter following thereon.

David, late Earl of Buchan, succeeded to the entailed estate after the death of the said Henry Lord Cardross, and Katharine Stuart, his father and mother ; and he having also contracted considerable debts, which could not affect the entailed estate, his creditors proceeded to diligence against him, by adjudging his life-rent of the estate, and arresting the rents. This brought on a competition, in 1733, among the several creditors, and produced a sequestration, which continued till the Earl's death in October 1745. The creditors were classed, and afterwards preferred as follows.

1st, The real creditors of Sir James Stuart, the maker of the entail, and of his son, the first institute.

2^{dly}, The son of the late Earl of Buchan, for an annuity of £.300 Sterling, which had been assigned to him out of the rents, under the designation of Lord Cardross, by his father the late Earl, for an onerous cause ; in virtue of which he