1758. *February* 15.

ROBERT KER of Hoselaw, *against* MR. JAMES TURNBULL.

No. 103.
Heir of entail taking a discharge, as well as an assignation to a debt of the tailzier's, if he can still keep up the same as a debt against the entailed estate?

Andrew Ker of Hoselaw, in the year 1724, executed a deed of strict settlement or tailzie of his estate of Hoselaw; whereby, failing heirs of his own body, several of his nephews, &c. were substituted in their order, and burdened with the payment of his debts and legacies.

The said Andrew Ker, in the year 1723 and 1724, had granted two bonds, the one for 3,000 merks to Alison Callander, and the other for 600 merks to John Alexander; which were the only debts he left behind him.

He was succeeded in this entailed estate by Andrew Ker-Reid, who, having paid off the debts above mentioned, got them discharged, and at the same time took assignations to the two bonds, in order to keep them up as debts upon the estate, and thereby to serve as a fund for providing his younger children.

In the year 1747, Mr. Ker-Reid conveyed these bonds and assignations to his daughter, adding to the description thereof the following words: "I being willing and desirous, that the said sum should remain and abide as a debt upon the lands and estate of Hoselaw, as the same was a debt of the entailer."

The defender, Mr. James Turnbull, intermarried with the daughter of the said Andrew Ker-Reid in the year 1755, who conveyed to him all that she was possessed of, and, *inter alia*, the two bonds above mentioned.

Robert Ker-Reid, the only son of Andrew Ker-Reid who survived him, died; and was succeeded in the entailed estate by the pursuer, a distant cousin, who brought a process of reduction of these two bonds against the defender, concluding, That it should be found, that they did not affect the entailed estate; and, particularly with regard to the said bond for 3,000 merks, he contended, That as by the terms of the discharge, and assignation thereof, the creditor had, in express words, discharged the said Andrew Ker-Reid, who paid the debt, "and all others the representatives of the said Andrew Ker, the granter of the bond, of the sums therein contained," the debt was thereby sunk and sopited, as to the heir of entail paying; and must also be extinguished as to the pursuer; and could not be revived by the after assignation to the defender or his author. An heir of entail paying the tailzier's debt, has not, *de jure*, relief against the next heir of entail. It is at best but a device of the law, which permits heirs of entail to keep up these debts, by taking assignments thereto in name of a trustee for their behoof. But where, as in the present case, the heir of entail pays the debts, and takes a discharge thereof, not singly to himself, but to the other representatives of the tailzier, the debt is sopited and extinguished.

Answered for the defender: Mr. Ker-Reid's intention to keep up this bond as a debt against the entailed estate, is clear, from the assignation, though it is inaccurately wrote, and from the whole circumstances of the case; and where such intention is clear, and it has appeared, that the heir did not intend to sink his money into the estate, such debts have always been found to subsist in his person,

No. 103. notwithstanding a discharge being granted. This was expressly found in the case of Gordon of Gairty against Sutherland of Kinminity, 29th January, 1731, (See APPENDIX) and also in another case, 22d of February, 1706, Temple against Gairns, No. 8. p. 15355. In the present case, some superfluous words have been added in the discharge; yet as Mr. Ker is "assigned to the principal bond, hail strength and effect thereof," &c. it is plain the parties did not understand, that by the discharge the bond was to be extinguished. And although the creditor discharges not only Mr. Ker, but all others the representatives of the granter of the bond, these words can only mean, those who were at that time liable; and can never be construed to extend to the pursuer, a remote heir of entail, who was not then in being.

"The Lords repelled the reasons of reduction,"

Act. *Lockhart.* Alt. *Pat. Murray.*

G. C. *Fac. Coll. No.* 101. *p.* 180.

1794. *February 5.* MOIR *against* GRAHAM and Others.

No. 104.

Moir of Leckie, in the entail of his estate, bound the heirs to carry the name and arms of Moir of Leckie without addition, &c. There being no such arms matriculated in the Lion-office, the Lords found it was incumbent on the heirs of entail to obtain from the Lion-office arms of that description. *Fac. Coll.*

*** This case is No. 99. p. 15537.

KINFAUNS.

No. 105.

In the case of Ewing against Miller, No. 51. p. 2308. reported by Lord Kilkerran, it is mentioned, that in the tailzie of Kinfauns the term *Daughter* was extended to grandchildren. See APPENDIX.

SECT. V.

Contravention.

1698. *January 25.* LADY LEE *against* LAIRD of LEE.

No. 106.
In a strict entail one of the limita-

Jean Howston, Lady Lee, pursues John Lockhart, now of Lee, and the Lady Stevenson, for the mails and duties of her jointure lands, in so far as may be ex-