

No. 140. The Lords sustained the reasons of reduction, and reduced, decerned, and declared."

Act. *Advocatus et M'Quosen.*

Act. *Montgomery et Dundas.*

A. W.

Fac. Coll No. 140. p. 324.

1765. February 22. DOUGLAS against STEWARTS.

No. 141.
Entail not fol-
lowed by in-
feftment.

Sir William Douglas of Kilhead executed an entail of the lands of Cumbertrees, in favour of himself in life-rent, and his son, afterwards Sir John Douglas, and the heirs-male of his body, in fee; failing whom, a series of other substitutes. This entail was recorded in the register of tailzies, but no infeftment followed. Sir John, the institute, possessed after his father's death, as apparent heir, and contracted considerable debts; whereupon his creditors charged him to enter in special to his father, and proceeded to lead adjudications against the estate. These adjudications were completed by infeftment, and the creditors pursued a ranking and sale of these lands, as well as others belonging to their debtor. This process was opposed by William Douglas, son of Sir John, and one of the substitutes, who insisted, that the entailed lands should be struck out of the sale. Urged for the creditors, That the entail was nothing more than a personal deed while infeftment had not followed on it; that the act 1685 requires not only the recording of the entail in the register of tailzies, but the recording of the sasine taken thereon; both these requisites are necessary to render the entail effectual against creditors, and neither of them by itself can have that effect. Sir John having possessed the estate solely as heir-apparent, and the act 1695 declaring, that the onerous debts of an apparent heir three years in possession shall affect the estate, the creditors were in perfect safety to contract with him, and no latent personal deed (for such is the entail if no infeftment on it appears on record,) can prevent their just debts from being effectual. The Lords found, That the lands of Cumbertrees ought not to be struck out of the sale. See APPENDIX.

Fol. Dic. v. 4. p. 351.

* * The like found, 1791, Peirse and his Attorney against Russel and Ross of Kerse. See APPENDIX.

1765. June 22.

NEIL EARL of ROSEBERRY against JAMES BAIRD, and other Creditors.

No. 142.
The act of
Parliament
1685 was
found to have
retrospect to
entails not
only made,
but complet-

The predecessors of Niel Earl of Roseberry executed an entail of the estate of Primrose, which, in the subsequent transmission of that estate to the several succeeding heirs, had been regularly recorded, with all its clauses, of whatever kind, in the register of sasines. This entailed estate having come into the possession of the present Earl, he was pursued by the creditors of his predecessors, notwithstanding of the entail prohibiting the contraction of debt, as it never had been