

The case of Gordon Cuming differs from the present in two respects. In the *first* place, there was, in that case, no actual sale; and the action was brought by the heirs in possession, of purpose to defeat the intention of the entail. In this case, the action is brought to enable the charger to fulfil an onerous bargain, which he is bound to perform under a high penalty; and as the only question is, Whether the suspender's purchase will be secure to him? so even the judgment in the other case seems to point out, that an onerous purchaser would have been safe. In the *next* place, the prohibitory words used in that case, against squandering or putting away the estate, were justly considered as equivalent to an express prohibition to alienate or sell.

“ The Lords found the letters orderly proceeded, and decerned in the declarator.”

For the Charger, *Montgomery.*

For the Suspender, *Lockhart.*

A. W.

Fac. Coll. No. 121. p. 282.

* * This case was appealed. The House of Lords, (20th March, 1765,) ORDERED and ADJUDGED, That the appeal be dismissed this House, and the interlocutor therein complained of be, and the same is hereby affirmed.

1768. *January 27.* M^cLAUHLAN *against* M^cLAUHLAN.

One who had granted a trust-disposition, for the purpose of bringing a reduction of his entail, was found not thereby to have incurred an irritancy, the intention having been only to try the validity of the entail.

Fac. Coll.

* * This case is No. 45. p. 15421.

1772. *July 14.* JAMES CAMPBELL of Blythswood *against* JOHN LOVE.

Colin Campbell of Blythswood executed a deed of entail, December 13, 1739, by which he disposed his lands and estate of Blythswood to himself, in life-rent, and James Campbell, his only son, in fee, and the heirs-male of his body; whom failing, to the several substitutes therein mentioned.

This entail contains the usual prohibitory, irritant, and resolute clauses, *de non alienando, et contrahendo debita*; and it also contains a *proviso*, that the heirs of entail shall not let tacks for above the space of nineteen years.

This entail was duly recorded in the register of tailzies, November 26, 1742; and the maker having died in 1745, was succeeded by his son, the foresaid James Campbell, who made up his titles to the estate upon this entail, and the

No. 90.

No. 91.

No. 92.

A second tack for 19 years, to commence upon the determination of a former, of the like endurance, which had near four years to run at the date of the second,