No. 96.

2do, It is not *ultra vires* of the heir of entail to grant the assignation challenged.—If the heir had chosen it, he might have gone farther; and, by letting the lands for the same length of time, at a low rent, obtained large grassums, instantly advanced, with which the debts could have been paid off.

The greater part of these debts were contracted for the benefit of the pursuers, and the whole subsequent heirs of entail, as it was by means of the process in which they were incurred, that the present line of heirs came to be entitled to the succession.

The judgment of the Court was, Find, " That the insisting in a reduction of the tack dated the 5th April 1765, was inept and incompetent, and assoilzie the defender from that conclusion of the pursuer's summons. Repel the reasons of reduction of the tack granted by Peter Leslie Grant to the said David Orme, dated 29th March 1769. Repel the reasons of reduction of the obligation and assignation, dated the 29th March 1769, in so far as respects the restriction of the tack duty, and assignment of the surplus over and above the £.300, during the lifetime of the said Peter Leslie Grant, and of the pursuer's father; but sustain the reasons of reduction thereof, in so far as regards the restriction and assignment of the tack duty of all years from and after the death of the pursuer's father. Repel the reasons of reduction of the ratification by the pursuer's father, in so far as regards the tack itself, and the restriction of the tack duty, and assignment of the surplus thereof, for the purposes therein mentioned, during the lifetime of the pursuer's father, after his succession to the estate of Balquhain; but sustain the reasons of reduction *quoad ultra*. Sustain the reasons of reduction of the deed of restriction granted by the said Peter Leslie Grant to the said David Orme, dated the 5th day of August 1769 years; and of the tack and deed of restriction, granted by the said Peter Leslie Grant to the said David Orme, dated the 7th day of September 1773; and also of the tack granted by the said Peter Leslie Grant to the said David Orme, dated the 11th day of September 1773.

Lord Ordinary, *Covington.* Act. *Lord Advocate, M, Laurin, Blair.* Alt. *D. Graeme, Crosbie. Armstrong, Ferguson.*
Clerk, *Robertson.*

Fac. Coll. No. 75. *p.* 141.

*** This case was appealed. The House of Lords, 25th February, 1780, ORDERED and ADJUDGED, that the appeal be dismissed, and the interlocutors complained of be affirmed.

1786. *March* 10.
WILLIAM DICKSON, *against* JOHN DICKSON, WILLIAM CUNINGHAME, and Others.

No. 97.
The prohibitions of an entail cannot

William Dickson, the owner of the estate of Kilbucho, executed an entail, by charter and infeftment, in which the prohibitions, irritancies, and resolutive clau-

ses, were directed against himself, in the same manner as against the substitutes. —Having afterwards contracted considerable debts, he was obliged to sell to Cuninghame a part of the lands comprehended under the entail. He then brought, against the substitutes, an action for trying the validity of the sale; while the purchaser at the same time presented a bill of suspension, on the ground of the seller's want of power.

No. 97. be directed against the maker, so as to hinder his debts, though contracted after its date, from being effectual against the lands.

The Lords considered the entail to be altogether ineffectual in a question with the creditors of the entailer. The statute 1685, authorising settlements of that sort, related, it was observed, to the case of heirs alone, whose interest might, according to the forms therein prescribed, be limited or modified by the deed of the ancestor, from whose gift they derived the estate. But the case of the proprietor himself was left to the regulation of the common law. The maker of the entail in question might have restricted his right to a mere life-rent, or, by executing a bond of interdiction, he might have precluded his burdening the lands, unless for onerous or rational causes. These, however, were the only methods by which the order of succession marked out by him could be secured against his future contractions; the general rule being undoubted, That no man can, by any device, withdraw his estate from being liable for his debts.

The Lords decerned in the action of declarator; and at the same time refused the bill of suspension presented by the purchaser.

Lord Reporter, *Stonefield*. Act. *Honyman*. Alt. *Dean of Faculty*. Clerk, *Orme*.

C. *Fac. Coll. No.* 268. *p.* 415.

1789. *July* 8. CHARLES STEWART *against* MISS SOPHIA HOOME.

No. 98. A prohibition to sell does not hinder an alteration of the course of succession.

Mr. Hoome of Argaty made a settlement of his estate in favour of George Stewart his brother, and of a series of heirs in substitution, containing a prohibition, " during the space of thirty years next after the granter's decease, to sell and dispone, feu or wadset those lands, or to contract debts or grant any deeds whatsoever, whereby the lands, or any part of them, may, or can be evicted by adjudication or otherwise, without procuring the special consent, to the making of such sales or contracting such debts, of certain persons named trustees for judging and determining the expediency and reasonableness thereof." This prohibition was accompanied with irritant and resolutive clauses.

The eldest son of George Stewart having succeeded in his order, he, in his marriage-contract, without requiring any consent of the trustees, formed a new line of succession, by virtue of which, upon his decease, though long prior to the lapse of thirty years, the right of the estate was claimed on behalf of Sophia Hoome his daughter. In opposition to this claim, Charles Stewart, the heir under the entail,

Pleaded: The restraints or fetters of an entail are not, it is admitted, the subject of a *quæstio voluntatis*, but of strict legal interpretation. Thus, if to a desti-