

1792. May 18.

STEWART *against* HOME.

No 54.

STEWART of Argaty, by deed of entail, disposed his lands to his brother George and a series of substitutes, and appointed the following condition to be engrossed in the indentments, "That the said George Stewart shall be burdened with, and obliged to pay, the whole just and lawful debts owing by me at my death, &c. and certain provisions." George succeeded and made up titles under this deed, and having died, his widow claiming a terce out of the lands, it was *objected*, That the estate being settled on her husband under the burden of the entail's debts and provisions, these must, *pro tanto*, diminish the terce. *Answered*, Where lands are disposed as burdened with certain debts, these are real liens; but where the disponee or heir is only taken bound to pay, as in the present case, they remain personal. THE LORDS found, That the burdens were personal on the heir, and not real on the lands.

Fol. Dic. v. 2. p. 51. Fac. Col

* * * This case is No 11. p. 4649, *voce* FOREIGNER.

SECT. V.

Clauses burdening Conveyances.

1661. December 20. HUGH MONTGOMERY *against* LORD KIRKCUDBRIGHT.

No 55.
A party was barred from pursuing a process of ejection, although the defender had no real right, but only a personal obligation of the pursuer to grant to the defender a real right.

HUGH MONTGOMERY of Craishaw, and — M'Clellan his spouse, pursue the Lady Kirkcudbright, for ejecting them out of the five pound land of Overlaw, and craved re-possession, and payment of the mails and duties intromitted with. The defender *alleged* no process, because it is not alleged that the pursuers were in natural possession; for only the natural possessors can have decreet of ejection, because, if there be no deed of violence libelled, but only intromitting with the mails and duties, ejection is not competent, nor any violent profits, but only action for mails and duties against tenants or intromitters. The pursuers *answered*, That the ejection may be competent though the pursuer was not in natural possession, when a tenant is ejected, and a stranger without interest enters in the natural possession; albeit the tenants should collude or neglect, the heritor having but civil possession, by uplifting of mails and duties, needs not warn the ejector, but may crave to be entered to the natural