

No. 57.

1796. March 1.

GIBSON *against* KER REID.

When an entail fixes the *maximum* of the provision, which an heir can give to his widow, and he dies without making any settlement, a greater sum cannot be awarded to her in name of aliment.

*Fac. Coll.*

\* \* \* This case is No. 108. p. 5891. *voce* HUSBAND AND WIFE.

1796. November 12.

ROBERT BRUCE HENDERSON *against* SIR JOHN HENDERSON.

No. 58.

An heir of entail who holds the estate in virtue of an adjudication from the person last in possession, obtained in consequence of a clause of devolution in the tailzie in his favour, is equally fettered by the restrictions laid upon heirs of tailzie, as if he had taken the estate by service as heir of provision under the entail.

James Henderson, in 1740, executed an entail of his estate of Earlshall, "in favours and for new infeftment of the same, to be made and granted to myself, and Helen Bruce, my spouse, in conjunct fee and life-rent, and the heirs of my body in fee;" and after various substitutions in favour of Sir Robert Henderson of Fordel, "my nephew, and the heirs of his body; which failing, any other heirs I shall hereafter nominate and appoint by a writing under my hand; and failing such appointment and nomination, my own nearest heirs and assignees whatsoever."

The entail contained prohibitory, irritant, and resolute clauses, for preventing "the said Helen Bruce, and the heirs of tailzie and provision above written," from selling the estate, or contracting debt upon it.

By a subsequent part of the deed, it is provided, that "in case any of the heirs of tailzie above written shall happen to succeed to, and be in possession of, the lands and estate of Fordel, then, and in that case, the said heirs shall be obliged to make up proper titles in their person to the lands and estate herein contained, and to make over and convey the same to and in favour of their second son; and failing their second son, or younger sons, to their eldest daughter, and the heirs of their bodies; which failing, to the second son; and failing of him and younger sons, the eldest daughter of the next generation who does not succeed to the estate of Fordel; and so on successively in the family of Fordel, while there are second or younger sons or daughters in the said family, whereby the said estates may be enjoyed by two separate and distinct persons, and the said lands of Earlshall not absorbed in the estate of Fordel; and when it shall happen that there are no second or younger sons or daughters in the said family, but only one son or one daughter, who is to succeed to the said estate of Fordel, or in possession thereof, then the only son or only daughter may hold and enjoy the lands and estate contained in this present tailzie, until a second son, and failing him, a daughter, shall exist, to whom he or she shall be bound and obliged to convey the said estate, as aforesaid, but without being liable to account for the rents and profits of the said estate during their possession; but always with and under the provisions, conditions, clauses