

No. 17.

The pursuer answered, That after all is said, he is insisting in nothing but a common action for reparation : The Earl of Forfar, as heir of line to the Countess of Sutherland, maker of the entail, was obliged to fulfil the conditions under which she bound herself and her heirs, that the heritage should descend : Instead of fulfilling these conditions, he burdened the heritage with his debt, and did thereby all in his power to disappoint the entail. Do not the common principles of law dictate, that he and his representatives ought to make reparation to the substitutes for the damage he has done them, and for that reason purge the heritage of these debts ? It does not admit of a question ; and if the contrary were found, the act of Parliament 1685 would be of no significancy to preserve a subject entailed ; for an heir entering would have nothing to do, but omit inserting the irritancies which the law directs in the subsequent conveyances, and charge the estate with debts to the value ; and having thus the price of the estate in his pocket, he could apply it in what manner he thought fit, as being subject to no action at the instance of the substitutes : And it is a jest to say, that this would be an irritancy of his right ; for what does he suffer when he has got the full price of the subject, and at the same time shaken himself loose of the fetters put upon him, and disappointed the anxious settlement of the donor ?

“ The Lords found, That the heirs of tailzie in the Countess of Sutherland’s disposition, could not alter the order of succession therein set down ; and that the last Earl of Forfar, who was infest as the said Countess’ heir of line, was obliged to have resigned, in terms of the procuratory contained in the tailzie ; and that the Duke of Douglas, who was heir of provision to the said Earl of Forfar, is thereby bound to disburden the said Countess’ tailzied estate, and to relieve her heirs of tailzie of the debts of the family of Forfar.”

*Fol. Dic. v. 2. p. 435. Rem. Dec. v. 1. No. 104. p. 198.*

No. 18.

1736. *February 4.* EARL OF PETERBURGH *against* FRASER.

A wadset purchased by an heir of entail, the reversion of which made part of the entailed estate, found affectable for his debts.

*C. Home.*

\* \* This case is No. 9. p. 3086. *voce* CONSOLIDATION.

1744. *January 31.*

MRS. MARGARET LAUDER *against* SIR DAVID BAIRD of Saughtonhall.

No. 19.  
An heir of  
retail not

The estate of Saughtonhall descended to Sir Robert Baird by a tailzie, under irritant and resolute clauses, but with power to the heirs of tailzie to give life-