

1755. *January 31.*LORD CATHCART *against* STEWART NICHOLSON SHAW.

No. 114.

A person having entailed his estate in his son's contract of marriage, reserving a power to the heirs to grant feus, at the rate of a certain feu-duty for each fall of houses, &c. he himself granted a large feu, and discharged the subjects of thirlage, minister's stipend, cess, and public burdens, irritancy *ob non solutum canonem*, and the duplication of the feu-duty at the entry of heirs. A declarator of irritancy being brought, it was urged in defence, That before the entail, the defender being absolute fiar, had a power to feu as he pleased. In the entail he reserved a power to feu, under a limitation, that the feu-duty should be of a certain extent; he has observed that limitation; and his original power, in other respects, is the same as before the entail. The Lords found no irritancy incurred.

This entail reserving a power to the heir to let tacks for nineteen years, he let the tack of the rents of a Barony, many of the tenants of which had tacks for terms to run. Objected, That the reserved faculty was only meant to empower the heir to let the farms which were unlet, but not to grant a general tack of the rents. The Lords sustained the tack.

This reserved faculty, however, was found not to entitle the heir of entail to grant a tack of the mansion-house, gardens, and pleasure ground.

Fol. Dic. v. 4. p. 341.

* * This case is No. 33. p. 15399.

1756. *January 28.*HOUSTON *against* NICHOLSON.

No. 115.

The entail of the estate of Carnock having a clause, enabling the heirs of entail, males or females, to provide their husbands and wives in life-rents to the extent of a third of the rents; this clause was found sufficient to enable the first institute, jointly with her son, the next apparent heir, to settle, in his contract of marriage, a jointure extending to a third, although the said apparent heir, after the death of his mother, never completed his titles to the estate.

Fol. Dic. v. 4. p. 341.

* * This case is No. 68. p. 2338. *voce* CLAUSE.