1784. *February* 20. SPALDING *against* LAURIE.

No. 51.

Walter Laurie entailed his lands of Bargattan under the usual limitations and restrictions. He afterwards purchased the teinds, which were disponed to him and his successors in the lands; but on this disposition no infeftment followed. On the death of an heir under this entail, a creditor of his pursued the next heir of entail, on the ground, that these teinds having been held by the debtor unfettered by any entail, were liable to his debts. Urged in defence, That accessorial rights are subject to the same qualities and restrictions with their principals, or the subjects to which they are annexed. The Lords found the teinds were not entailed.

Fol. Dic. v. 4. *p.* 344.

*** This case is No. 55. p. 14461. *voce* SERVICE OF HEIRS.

1784. *March* 3.

PATRICK STEWART and Others, *against* ROBERT VANS-AGNEW.

No. 52.
Mutual entail, imposing its restraints on the granters, not good against creditors.

John Vans of Barnbarroch, married a daughter of Robert Agnew of Sheuchan. Afterwards a contract was executed, one part of which was, an entail by Mr. Agnew, of his estate, upon his daughter and her husband, their issue, and a series of other heirs in substitution; and the counterpart, a destination by Mr. Vans, in the same terms, respecting his lands. This mutual tailzie contained conditions prohibiting the granters as well as the heirs from alienating the lands, or affecting them with debt, which were guarded by the usual irritant and resolutive clauses. It was farther completed by infeftment.

Stewart, and other creditors of Mr. Vans, having instituted against Robert Vans-Agnew his son, and the first heir of the entail, an action of reduction of that deed,

Pleaded: The efficacy of entails, in general, might justly have been questioned before 1685. By the statute indeed which passed in that year, every doubt on this head was removed, and validity imparted to entails; but it was to those only which correspond to the description of the enactment, or in the structure of which its directions are observed. These, therefore, are now the only valid entails; the effect of them at common law, (of such, at least, as like the present, are made real by infeftment) being thus precluded. Now, an entail which imposes festers on the entailer himself, is evidently no object of the statute under consideration, the express terms of which exclusively refer to the limitations of property in the person of heirs, alone; a distinction of the most important kind, since it is obvious, what dangerous sources of fraud would otherwise be opened up.

Answered: The contract in question was an onerous deed, the one entail being made in consideration of the other; and the power of executing such a bargain seems to be inherent in the right of property.