

without the superior's consent, yet the statutory part discharges, in general, all prohibitory clauses, restraining the power of alienation. The clause in question is certainly one of that kind. Indeed, when the circumstances are attended to, the effect of it will be found the same as of a simple prohibition to alienate without the superior's consent. The price at which the vassal must offer the lands to the superior, is but 20 years purchase of the present rent. Now, as the vassal never will offer his lands to the superior, at this rate, more especially, as by wadsetting, or granting heritable securities, he may command a larger sum; so the lands never will be sold, unless the vassal, in terms of the other alternative of the clause, obtain allowance from the superior to sell them to another. The same view of the case shows, that it cannot be said, That any patrimonial interest arises to the superior from this clause, and that it is indeed, in the words of the statute, a clause more burdensome to the vassal, than beneficial to the superior.

No 71.

*Replied for the Suspenders,* It is clear from the statute, that it was only meant to discharge the express prohibitions to alienate without the superior's consent. Upon the charger's construction, it would even cut down the stipulations for doubling the feu-duty, or paying a year's rent upon the entry of a singular successor; for these are, in a certain degree, restraints upon alienations. The rise of the value of the land ought not to have any weight. This is accidental, and the lands might have sunk in their value, as well as risen.

'THE LORDS found the clause did not fall under the statute, and remitted to the Lord Ordinary to proceed accordingly.'

For the Chargers, *Crosbie.*For the Suspenders, *Mr Solicitor.*

A. R.

*Fol. Dic. v. 3. p. 131. Fac. Col. No 62. p. 106.*

1791.

CLAYTON against GRAHAM.

JAMES CLAYTON conveyed certain lands to his son Thomas, and to the children of a marriage; whom failing, his son's heirs by any other marriage; and failing these, to the heirs of the granter. The disposition contained a clause, that in case of the failure of heirs male of his son, and that the succession should devolve to females, a right of redemption of the lands from the heir female should be competent to the granter, and to his heirs-male, for six years after the succession thus opening to an heir female. Thomas Clayton having sold the lands, a doubt occurred to the purchaser, that as Thomas had an only daughter, and a brother of the disponent, who was his heir male, was yet alive, the right of redemption might still be competent, on Thomas's death, to this heir male

No 72.

A clause of redemption in favour of heirs male, in the event of an estate devolving on females, found unavailing against an onerous sale by the institute.

No 72. of his father; and the question was tried in a suspension brought by the purchaser.

THE LORDS were of opinion, that although the clause of redemption could not have been defeated by any gratuitous deed of Thomas Clayton, it was not available against an onerous deed; and therefore found the letters orderly proceeded. The like found, 1791, General Græme's Trustees *contra* Stewart Moncrieff's Trustees, *voce* FIAR ABSOLUTE, LIMITED.

*Fol. Dic. v. 3. p. 132.*

Constructions of various clauses in entails. *See* TAILZIE and FIAR ABSOLUTE, LIMITED.

Clauses in contracts of copartnership. *See* SOCIETY.

Import of conditional clauses. *See* CONDITION.

Interpretation of various clauses in deeds *mortis causa*. *See* PROVISIONS to HEIRS and CHILDREN.

Clauses in tacks. *See* TACK.

*See* Currie *contra* Hannay, *voce* SALE.

*See* APPENDIX.