

No. 146. January, 1792, No. 178. p. 10971. Elizabeth was not apparent heir of line, or of investiture; the old investitures standing to heirs-male. Her father, too, never was infest, except in life-rent, in the year 1736; and therefore she could not be heir apparent under that deed. Besides, the disposition 1736 was a defeasible deed, and actually defeated; but the tailzie, which remained personal, and which she recorded as her only subsisting title, continued to her death to give her the right of apparent heir of tailzie, under which alone she possessed the estate; and every person contracting with another, having only a personal right to his estate, must be affected by the conditions and qualities of that right; Denham of Westshield against Baillie, 1731, (See Appendix;) Gordon of Carleton, 14th November, 1749, No. 23. p. 15384.

The Court, upon these grounds, (14th January, 1803,) assoilzied the defender on advising informations.

And adhered, by refusing a reclaiming petition without answers.

Lord Ordinary, *Methven*.

For Syme, *J. Clerk, W. Clerk.*

Agent, *Party.*

For Dewar, *M. Ross, J. Wolfe-Murray.*

Agent, *B. Whyte, W. S.*

Clerk, *Menzies.*

F.

Fac. Coll. No. 80. p. 179.

S E C T. VIII.

Act 10. Geo. III. Cap. 51.

1793. *January 22.*

TRUSTEES OF SIR FRANCIS ELLIOT *against* SIR WILLIAM ELLIOT.

No. 147.

Trustees of the proprietor of an entailed estate found entitled to claim from the succeeding heir, three fourths of the sums expended in improving it, though he had taken grassums, and had not raised the old rent.

Whether the notice given to the suc-

The late Sir Francis Elliot held the estate of Stobs under a strict entail, but which contained no limitation as to letting leases and taking grassums. It was his usual practice, after improving his farms, to let them in leases for nineteen years, at the old rent, and to exact a grassum at their commencement.

In an action brought upon the 10th Geo. III. Cap 51. by which the proprietors of entailed estates may, under certain conditions, have three-fourths of the money which they lay out in improving them, declared a burden upon the succeeding heirs of entail, he was found entitled to charge the sum of £.1926 15s. 3½d. against them.

The sum which had been thus ascertained, Sir Francis conveyed to trustees for payment of his debts, and other purposes; and when, after his death, his trustees came to demand payment, Sir William Elliot, the succeeding heir,

Pleaded: When formerly the proprietors of entailed estates had no means of improving them, without diminishing the fund for providing their widows and

younger children, or, if they died, before reaping the advantage, without making a present of the money expended to the succeeding heirs, their estates, as might be expected, were exceedingly neglected. The sole object of the statute was to enable them to improve their estates without diminishing their executry.

But if the present claim is supported, the proprietor of every entailed estate has an easy method of nearly doubling his executry. By taking grassums he recovers what he has expended in improving it, while at the same time three fourths of the sum are made a burden on the succeeding heirs of entail. And in this way, contrary to justice, and the evident intention of the Legislature, the succeeding heir becomes a loser by the improvement of his estate.

It may indeed happen, even where no grassum is taken, that notwithstanding the precautions of the statute against injudicious application of the money, the projected improvements may not raise the rent: That, however, is a *casus fortuitus*, which cannot be foreseen; but here the law is wilfully evaded; 15th January, 1761, Sir Archibald Denholm against William Wilson, No. 88. p. 15512.

Answered: As the enactments of the statute are clear and unambiguous, no conjectures as to the meaning of the Legislature can be admitted. However advantageously the holder of an entailed estate may have employed his money in improving it, he will have no claim against the heirs of entail, if he has not rigidly followed out the directions of the statute. On the other hand, if he obeys them, the statute does not require that this expenditure should be beneficial to the succeeding heir.

There is nothing in the statute, nor in the present case in the entail, to prevent the heir from letting leases, even below the old rent, and taking grassums to any amount. By taking grassums, he does not become debtor to the succeeding heir, who cannot therefore, by compensation on their account, get rid of a debt, with which a public statute, and a decree of this Court, has burdened him.

The Lord Ordinary pronounced the following interlocutor: "Finds, That the late Sir Francis Elliot of Stobs, being laid under no restriction by the entail of that estate, had power to grant leases at the former rent, and take grassums: Finds, That as in case he had not laid out money on said estate, the succeeding heir of entail could not have claimed from his representatives the whole or part of the grassums so taken by way of action, so as little can he claim the whole or part of such grassums by way of exception or defence against this process, which concludes for payment of a sum laid out by Sir Francis, and for which he obtained a decree *in foro* before this Court, against the defender, and others; therefore decerns for the sums libelled.

Upon advising a reclaiming petition and answers, it was

Observed on the Bench: When the taking of grassums is not prohibited by the entail, the succeeding heir has no claim on their account. It may often happen, that the succeeding heir of entail may reap no benefit from improvements, with the expense of which, however, he is burdened. One of the Judges thought, that there could be no doubt as to the right of taking grassums, but that the act could

No. 147.
ceeding heir
of entail must
specify every
particular of
the plan of
improvement
intended?

No. 147. not be so construed as to make the succeeding heir a loser by the improvement of his estate, and that therefore no claim ought to lie against the defender, till the expiry of the current leases.

The Court, (28th November, 1792,) adhered to the interlocutor of the Lord Ordinary, decerning for the sums libelled, but remitted to his Lordship to adjust the interlocutor, according to the 16th section of the statute, that is, to allow the heir, instead of paying the money, to assign a third part of the free rents of the estate during his life, or till payment.

A reclaiming petition was followed with answers. In these papers, little was said on the general point above stated. But the defender had brought a reduction of the decree in favour of his father, on the head of minority and lesion, which the Lord Ordinary had conjoined with the process at the instance of the trustees, and various objections to the decree were now stated. In particular, it was objected, That Sir Francis, in the notice given to the succeeding heir of entail, instead of specifying the kind of improvement intended, as required by the 11th section of the statute, had contented himself with saying, that he meant to improve the farms of A, B, and C, "by planting, draining, and inclosing."

The Court thought the information given was sufficient to put the heirs of entail on their guard, and that no further specification was necessary. The other objections may be sufficiently understood from the interlocutor of the Court, "Finding the respondents (trustees) not entitled to charge money laid out in repairing farm-houses or building lime-kilns, nor for building houses or out-houses, which were not mentioned in the previous notices given to the heirs of entail, in terms of the statute, nor for buildings or improvements executed within three months subsequent to the said notices, and with these variations, adhering to their interlocutor reclaimed against."

Lord Ordinary, *Dreghorn.* Act. *Lord Advocate, Wight.* Alt. *Tail.* Clerk, *Hmc.*
D. D. *Fac. Coll. No. 16. p. 32.*

Heir of Entail, How far he represents the Defunct? See REPRESENTATION.

Irritancy, Whether effectual without Declarator? See IRRITANCY.

See FIAR ABSOLUTE, LIMITED.

See FORFEITURE.

See REGISTRATION.

See No. 3. p. 232.—No. 41. p. 3217.—No. 43. p. 5803.

See APPENDIX.