

The Lords considering the present to be completely settled by those cases, found, "That the late James Cathcart Taylor being institute in the entail, was not affected by the fetters thereof; and that, therefore, the defender cannot plead the entail in bar of payment of the debts contracted by his father, the said James Cathcart Taylor."

No. 74.

Lord Reporter, *Eskgrove.* Act. Lord Advocate Dundas, R. Craigie, Hope.
Alt. Solicitor-General Blair, Rolland, Monypenny. Clerk, Gordon.

D. D.

Fac. Coll. No. 111. p. 253.

1799. February 27.

JOHN SYME *against* ANNE RANALDSON DICKSON.

Andrew Ranaldson executed an entail of his lands of Blairhall and others, containing a procuratory of resignation in favour of himself in life-rent, and of John Ranaldson his eldest son, and the heirs-male lawfully to be procreated of his body, in fee; whom failing, to his younger children, and certain other substitutes.

The prohibitory, irritant, and resolute clauses, were as follow:

"*Sexto*, Providing and declaring always, as it is hereby expressly provided and declared, That it shall not be lawful to, or in the power of the said John Ranaldson my son, or any of the other heirs of tailzie above mentioned, whether male or female, or the descendants of their bodies, to sell, alienate, wadset, dispone, or grant in feu-farm, either redeemably or irredeemably, except as hereafter mentioned, the lands and estate above resigned, or any part or portion thereof, or to contract debts, or grant bonds, or other securities of whatever nature, whether heritable or moveable."

"*Octavo*, Providing and declaring always, as it is hereby expressly provided and declared, That in case "my said son, or any of the heirs of tailzie appointed to succeed him," in manner before mentioned, shall fail in the performance and observance of all or any of the conditions, provisions, limitations, declarations and others specified in the *second, third, fourth, fifth, sixth, and seventh* articles of this present deed of entail, which are held as word by word repeated for the sake of brevity, or in the performance of any one article thereof; then, and in either of these cases, not only shall all such acts, facts, deeds, conveyances, bonds, adjudications, or other writs of whatever nature, executed, subscribed, led, deduced, or permitted to be deduced, done or executed, contrary, or inconsistent with the fore-said provisions, conditions, and others contained in the said six articles, be in themselves absolutely void and null, and of no force, strength, or effect, to affect, evict, burden, encumber, hurt or prejudice the lands and others above resigned, or the heirs succeeding, or entitled to succeed to the same, agreeable to the order and course of succession before established, and make no faith in judgment or outwith the same; but also *the person or persons heirs of tailzie foresaid* so contravening these conditions, provisions, and others, by doing, executing, subscribing, leading,

No. 75.

The resolute clause under mentioned, found to apply to the institute in the entail.

No. 75. deducing, or permitting to be led, deduced, done or executed, any act, fact, deed, conveyance, bond, adjudication, or other writ of whatever nature, contrary to, or inconsistent with the aforesaid provisions, conditions, and others contained in the said six articles and conditions of this present tailzie, shall, for him or herself alone, but not for the descendants of his or her bodies, forfeit all right, title, and interest, to the lands and others above resigned, or any part or portion thereof, or rents, mails, and duties of the same, and all the right of succession otherwise competent to them to the lands and others aforesaid, and the same shall immediately thereafter fall and belong to the next heir of tailzie," &c.

Andrew Ranaldson died in 1778, and was succeeded by John the institute, who made up his titles by a charter proceeding on the procuratory contained in the entail.

John died in the year 1796, and was succeeded in the entailed estate by his sister Anne Ranaldson Dickson.

John left his affairs in bad order ; and before his death, he executed a trust for behoof of his creditors.

John Syme, the acting trustee, conceiving the entail not to be effectual against John Ranaldson, brought an action against Mrs. Dickson, concluding for part of his debts, on the ground of her representing her brother universally.

The pursuer

Pleaded : To render an entail effectual against the creditors of the institute, it must contain prohibitory, irritant, and resolute clauses, all technically directed against him. Now, although the prohibitory and irritant clauses apply to John Ranaldson, the resolute does not. Its words are, " the person or persons heirs of tailzie aforesaid," shall forfeit, &c. which, in sound construction, comprehend the heirs of entail only, and not the institute ; House of Lords, 15th April, 1771, Edmonstone, No. 59. p. 4409.

Answered : The irritant and resolute clauses form but one sentence, which begins with describing the persons whose acts are to be controuled, namely, " the entailer's son, or the heirs appointed to succeed to him, plainly and correctly distinguishing John Ranaldson from the heirs of tailzie. It is therefore evident, that as, in the after-part of the sentence, by the " persons," heirs of tailzie foresaid, none other could be understood but the heirs of tailzie, so by the preceding word " person," none other could be meant but the entailer's son. The word " foresaid," must be held as adjected to each member of the sentence ; and consequently, it falls to be read as if it had been written, the " person foresaid, and the persons heirs of tailzie foresaid."

The Lord Ordinary having-taken the case to report on informations, the Court thought the reference to the institute in the resolute clause was sufficiently explicit to bring him under the entail, and assoilzied the defender.

Lord Ordinary, *Eskgrove.* Act. *Cha. Hay.* Alt. *Rolland, Jo. Dickson.* Clerk, *Pringle.*
R. D. *Fac. Coll. No. 116. p. 262.*