

No. 103. notwithstanding a discharge being granted. This was expressly found in the case of Gordon of Gairty against Sutherland of Kinminity, 29th January, 1731, (See APPENDIX) and also in another case, 22d of February, 1706, Temple against Gairns, No. 8. p. 15355. In the present case, some superfluous words have been added in the discharge; yet as Mr. Ker is "assigned to the principal bond, hail strength and effect thereof," &c. it is plain the parties did not understand, that by the discharge the bond was to be extinguished. And although the creditor discharges not only Mr. Ker, but all others the representatives of the granter of the bond, these words can only mean, those who were at that time liable; and can never be construed to extend to the pursuer, a remote heir of entail, who was not then in being.

"The Lords repelled the reasons of reduction,"

Act. Lockhart.

Alt. Pat. Murray.

G. C.

Fac. Coll. No. 101. p. 180.

1794. February 5. MOIR against GRAHAM and Others.

No. 104.

Moir of Leckie, in the entail of his estate, bound the heirs to carry the name and arms of Moir of Leckie without addition, &c. There being no such arms matriculated in the Lion-office, the Lords found it was incumbent on the heirs of entail to obtain from the Lion-office arms of that description. *Fac. Coll.*

\* \* \* This case is No. 99. p. 15537.

#### KINFAUNS.

No. 105.

In the case of Ewing against Miller, No. 51. p. 2308. reported by Lord Kilkerran, it is mentioned, that in the tailzie of Kinfauns the term *Daughter* was extended to grandchildren. See APPENDIX.

### SECT. V.

#### Contravention.

1698. January 25. LADY LEE against LAIRD of LEE.

No. 106.

In a strict entail one of the limita-

Jean Howston, Lady Lee, pursues John Lockhart, now of Lee, and the Lady Stevenson, for the mails and duties of her jointure lands, in so far as may be ex-

tended to £.100 Sterling *per annum*, to which she has restricted herself during the Lady Stevenson's life. Alleged, *1mo*, She had unwarrantably filled up the whole lands in the blank, after her husband's death. Answered, *1mo*, Whoever trusts me with a blank paper, allows me the faculty of filling it up, as was used in bonds blank in the creditor's name; *2do*, I required you the heir to fill it up; and you refusing, I might lawfully do it; *3tio*, You have no prejudice; for it is qualified that it shall extend no farther than to the annuity of £.100 Sterling. The Lords repelled the allegiance. The *second* was, This is a tailzied estate, conceived under strict irritancies, and the fiar is expressly bound up not to provide his wife in a jointure exceeding a third of the free rent; so the debts must be deducted, whereof a condescence is given in, some of them real, and others personal. Answered, A life-rent provision to a third of the free rent can be subject to no debts but such as do affect the rent, which personal debts do not; and a widow's terce, (called in law *rationabilis tertia*) acknowledges no burdens but real ones, as Craig and our lawyers show, and no more can be imposed on the Lady Lee here. The Lords found she behoved to have a third of the free rent, with deduction of real debts allenarly. Then, *3tio*, alleged, By a clause of the tailzie made by Cromwel Lockhart of Lee, it is expressly burdened with all his debts contracted or to be contracted, which makes even his personal debts real. Answered, This makes Richard Lockhart, the next heir of tailzie, personally liable for all his elder brother Cromwell's debts, but does not make them real on the estate against the said Richard's Lady's jointure, given in an onerous contract of marriage. The Lords ordained this, and some other points of competition betwixt them, to be heard in presence.

*Fol. Dic. v. 2. p. 434. Fountainhall, v. 1. p. 815.*

1722. July 18.

SCOTT of GALLA against CREDITORS of GALLA.

Contracting of personal debts alone, where they are not made real upon the estate by diligence, is no deed of contravention, to irritate the heir's right, though the entail contain irritant and resolute clauses *de non contrahendo debitum*.

*Rem. Dec.*

\* \* This case is No. 72. p. 3673. *voce* ESCHEAT.

No. 106.  
tions was, that the fiar should not provide his wife in a jointure, exceeding a third of the free rents. The free rent was understood with relation to real incumbrances only, and it was found that personal debts could not be brought *in computo* to restrict the jointure.

No. 107.