

the pursuer (Mr. Graham) liable in expenses. A reclaiming petition for Mr. Graham was, (18th November, 1800), refused without answers. No. 96.

Lord Reporter, *Methven*.  
For Mr. Graham, *Ja. Graham*.  
For Mr. Flint, *Gillies*.

For the Trustees, *H. Erskine*.  
For Lord Torphichen, *Hope*.  
Clerk, *Home*.

*D. D.*

*Fac. Coll. No. 191. p. 438.*

1803. *June 8.*

The KING'S COLLEGE OF ABERDEEN *against* The EARL OF KINTORE.

No. 97.

Absolute warrandice being granted by the titular to an heritor in a tack of his feinds, the titular, in the case of an augmentation, is not bound by the terms of the tack, so far as the teinds are evicted by the Minister, but is relieved from the consequences of such eviction.

*Fac. Coll.*

\* \* This case is No. 96. p. 15712. *voce* TEINDS.

1806. *May 23.*

CLARKE *against* BRUCE.

No. 98.

The estate of Kinross came by succession to James Bruce Carstairs, as heir of entail, under the burden of entailer's debts to a great amount. He obtained, by an act of Parliament, authority to sell the estate, and, after payment of the debts, to vest the balance of the price in the purchase of lands, to be settled under the same provisions and destinations as the estate of Kinross. The estate was sold, and the lands of Tillicoultry were purchased accordingly. The conveyance was made exactly conformable to the entail.

A tailzie being defective in the clauses against selling, the consequences of this in a question with a creditor.

Dr. Charles Marshall Clarke, physician in Louth, acquired right to a bond for £1,111 due by the trustees of Mr. Bruce Carstairs, and not being able to obtain payment, in the year 1783 he obtained from him a disposition of such a part of the estate of Tillicoultry, as corresponded to his debt, at the rate of thirty years purchase. No infestment was taken on this disposition. Mr. Bruce Carstairs died the following year, and his son took possession of the whole estate.

By the prohibitory clause of the entail, the heirs were debarred from selling the estate, contracting debt, or doing any deed by which the estate might be evicted or adjudged. But, in the irritant and resolute clauses of the entail, the word "sell" was omitted, while all the other prohibitions were specially enumerated.

In consequence of this omission, James Bruce of Tillicoultry, the son and heir of Mr. Bruce Carstairs, sold a part of the estate to Mr. Tait of Hervieston. This