sey, 3 H. & J. 302, that issue in tail, claiming *per forman doni*, is not compellable to fulfill a contract entered into by the tenant in tail for the sale of the entailed estate under the Act of 1773, ch. 7 and its supplements.

The determination in Paca v. Forward *supra*, that an estate tail was not devisable, was explained in Laidler v. Young *supra*, that tenant in tail and the heir in tail are in the situation of joint tenants, the estate on the death of the tenant in tail survived to the heir, and as the will would not take effect until after the death of the former, the right of the latter by such death had already vested. Estates tail are expressly excepted in the Act of 1798, ch. 101, sub-ch. 1, sec. 1, Code, Art. 93, sec. 298,[11] from disposition by will, but this matter is covered by the decision in Posey v. Budd, *supra*.

From these cases it appears that the construction of the Act of 1786, ch. 45, in Smith v. Smith, was generally accepted until the case of Newton v. Griffith. The old lawyers seem to have considered that the heir, taking *per formam doni*, was not prevented by that Act from inheriting the estate tail itself, unless his ancestor barred it in the manner pointed out by the Act of 1782, ch. 23; and as a consequence it was not devisable nor chargeable with debts, unless by mortgage to the extent of the mortgage, nor bound by the executory contract of sale of the ancestor. But these points were all ruled the other way in Newton v. Griffith. A strong confirmation of the latter case may be found in Chelton v. Henderson, 9 Gill, 432, where A. devised to B. for life, and if B. should have issue of his body lawfully begotten then to such issue after B.'s death in fee tail, but if B. should die without issue of his body lawfully begotten, then to C. in fee. The question was whether B. took an estate for life or in tail. The Court observed that in England every inference and implication are in favour of the rights of primogeniture, and presumptions are raised in favour of the acquisition to title by descent rather than by purchase, and in accordance with such presumptions is the intention of the testator assumed to have been. For these and other reasons, inapplicable for the most part to devises here since the Act of Descents, issue there in a will has been determined to be a word of limitation and not of purchase, unless the intention of the testator to use it as a word of purchase is so clearly shown as conclusively to repel that presumption. But by the Act of 1786, ch. 45,[12] the rights of primogeniture were abolished, and estates tail general were made to descend to the heirs as fee simple estates, &c. The testator was fairly to be presumed to be aware of the nature of an estate tail and the effects produced on it by these Acts. Hence the intention of the testator clearly appearing to give a restricted interest to B., which would prevent his destroying the limitations over to his issue, the rule in Shelley's case was utterly inapplicable to the disposition made by that will.

It remains to observe that in Maslin v. Thomas, 8 Gill, 23, it was held that where an estate tail is docked by a deed of bargain and sale, an outstanding unsatisfied judgment against the tenant in tail is not let in as a lien on the estate thereby created or enlarged, as would have been the case had a common recovery been suffered.

---

[11] Code 1911, Art. 93, sec. 319. Estates tail special cannot be devised. Posey v. Budd, *supra;* Venable's Real Property 16.

[12] Code 1911, Art. 46, sec. 1.