

day reported to us. It was said that Jordanhill had taken decret of constitution against Lord Patrick *anno* 1713, and adjudication in 1725, but no evidence of them was produced. Most of the Lords were of opinion, that since this minute remained *in nudis finibus contractus*, a succeeding heir of entail was not bound to implement, and that the buyer was no such creditor as was secured by the act 1685. All that spoke were of that opinion, viz. Kilkerran, Arniston, Tinwald, (reporter) and Minto. I was in the chair, and doubted of the general point, though in this circumstantiate case I thought he could not be compelled *post tantum temporis* and such change of circumstances to implement, and the rest agreed to determine only this case, and we sustained the reason of reduction. (See No. 7.)

No. 33. 1748, July 27. SIR JOHN GORDON AND MR HAMILTON GORDON.

IN this dispute between the two brothers for the estate of Milton, being the estate of Hamilton Lord Hallcraig, we found last week that Sir John, as well as Lady Gordon, his mother, (the eldest daughter and heir-female of Lord Hallcraig) were liable to the condition in the tailzie of bearing the name and arms, or denuding in favour of the second son of the said heir-female. And the next question was, Whether Sir John had still the option, and might take the estate he assuming the name and arms, or if he is barred, 1st, by his mother and her husband's not taking the name and arms, and 2dly, by his own not assuming it since the year 1740 that the succession devolved to him? It carried that he is not barred, wherein I did not vote. Mr Charles Hamilton's (pursuer's) lawyers laid the whole weight on Lady Gordon having irritate, which I thought indeed she had done; but then the irritancy was forfeiting not only for herself and eldest son, but for all her descendants, which would have carried the estate from both; and I did not think that Charles could declare that irritancy. But I inclined to think, that Sir John had himself irritated, notwithstanding all his excuses; but that the lawyers for Mr Charles seemed to give up.

No. 34. 1748, July 27. CASE OF MURRAY KINNINMOND:

THE question was, Whether Mrs Murray, as heir of tailzie by progress to Sir Alexander Murray, younger, who represented his father *præceptione* was liable for old Sir Alexander's debts, contracted before the entail, particularly to Mrs Kennedy's jointure, secured by infestment on the estate, and afterwards the whole estate burdened with it in the entail. Arniston had found Mrs Murray's father, Hugh Murray, personally liable in a question with his other creditors competing for his executry; yet now he thought the heir only liable *in valorem* of her intromissions with the rents. And sundry of us thought it indeed very equitable that such heirs of tailzie should not be liable *ultra valorum* of the estate, no more than an heir *cum beneficiò*. But we all agreed, that so far an heir of entail is liable; and here there was no question that the estate was of much more value than the debt; and therefore we found her personally liable, and refused the bill. But upon a motion from the Bar, that our judgment might be on record, we allowed the Ordinary to pass the bill, and upon a warrant to discuss, remitted to the Ordinary to give the judgment,

and next day, 26th, the charger consented to suspend *simpliciter* all execution except, against the entailed estate.

No. 35. 1748, Nov. 19. CASE OF CAMPBELL of Skirvane.

THESE heirs applied for recording an entail in the register of tailzies, being already registrate in the books of Session, which we granted *periculo petentis*. But the President moved a doubt, Whether an entail not recorded during the life of the maker in the register of entails can be binding as to the irritant and resolute clauses, since the act 1685, which makes the production and recording a condition of the maker's power to make the entail, which therefore ought to be done during his life.

No. 36. 1749, Nov. 8. CAPTAIN SINCLAIR *against* HEIRS OF ENTAIL OF CARLOWRIE.

HENRY SINCLAIR of Carlowrie entailed his estate to certain heirs (which is now devolved to the pursuer) under limitations, irritant and resolute clauses, "not to alter, innovate, or infringe the tailzie, or order of succession, or to contract or take on any debts, or sums of money, or grant any right or wadset rights of annualrent, or to do any other fact or deed that may any wise affect, burden, or evict the lands or others." The subjects are the estate of Carlowrie, a house in Edinburgh, and a debt of 20,000 merks on Langtown. But it contains no express prohibition to sell; therefore Captain Sinclair pursues declarator of his power to sell, wherein he called his next heir-male and of tailzie, and the granter's heirs whatsoever, who were last called. These heirs whatsoever, who were four grand-nieces of the maker, raised a counter declarator; and the purpose of the heir's declarator was said to be to clear a sale he has made of Carlowrie. The President said it was in the same case with that of Hepburn of Keith, adjudged both here and in the House of Lords, that he might sell, and he was of opinion that so might the pursuer, and argued from all our decisions in other cases, and argued full. We all agreed, and decerned in Captain Sinclair's declarator, and assoilzied from the other, and found the letters orderly proceeded against the purchaser.

No. 37. 1749, Nov. 14. CREDITORS OF GORDON *against* GORDON.

JAMES GORDON of Carleton, in 1688, entailed his estate to the heirs-male of his body, whom failing to John Gordon, son of William Gordon of Earlston, whom failing Nathaniel Gordon of Gordonstown, whom failing to one Maitland, he assuming the name of Gordon, and the heirs-male of their bodies, and their heirs-male *successive*, with irritant and resolute clauses, declaring all acts of contravention to be not only null without declarator, but also "the person or persons so contravening, each of them, and their heirs above said, shall from thenceforth lose and amit my lands and estate, and be totally secluded therefrom, sicklike as if they were naturally dead, or never had been tailzied or provided thereto, and the same shall fall and accresce to the next substitute person and heir of tailzie to succeed therein, in whose favours and their heirs-male *successive*, the said persons contraveners are hereby holden to denude." Nathaniel Gordon succeeded,