

No. 26. 1744, July 5. CREDITORS OF HUGH MURRAY KINNINMOND  
*against HIS DAUGHTER.*

THE LORDS found that the debts of Sir Alexander Murray may affect the tailzied estate, because the irritant clauses were not inserted in the sasine of Sir Alexander Murray. And found that Mr Murray's accepting the disposition of Sir Alexander was no universal passive title. But before answer to the other points, ordained the creditors to give an account of the subjects disposed, and the debts paid by Mr Murray, distinguishing what he paid on assignments and what on discharges.

No. 27. 1744, July 26. DRUMMOND *against* DRUMMOND.

A SUBSTITUTE heir of tailzie applied summarily by petition to have a tailzie registrate in the books of Session transmitted to be registrate in the register of tailzies, which we refused because the institute was not in the field. He then raised a process against the institute for the same end, who did not compare; and Drummore summarily this morning brought the question before us. I moved that it should be delayed till November that the question might be deliberately considered. Yet the Lords proceeded and ordered it to be recorded.

No. 28. 1745, Jan. 23. RUSSELL *against* RUSSELL.

A MAN having tailzied a small estate charged with annuities to the extent of 1200 merks, he burdens the right in strong and anxious terms with all his debts to be resting at his death and even funeral charges. The debts being 15,000 merks, the defunct's executors claimed the executry free of debts, because the defunct had burdened his estate with them; but I repelled the claim, and the Lords unanimously adhered.

No. 29. 1746, June 17. HAMILTON *against* HEIRS OF PROVOST WIGHTMAN

A TAILZIE prohibiting the heirs to alter, innovate, or infringe the tailzie or order of succession, with irritant and resolute clauses of the contravener's right and deeds of contravention, not recorded in the register of tailzies, and as to some of the lands not completed by infestment;—the lands having been sold in 1725 by the heirs in possession who in a part of the lands were infest, but had not inserted the clauses in their infestments, but who in the other lands had made no other title than a service as heirs of provision; the next heirs of tailzie (who are now no less than seven) pursue a reduction. As to the lands wherein they had been infest I assoilzied in the Outer-House, but reported the other points this day to the Lords; viz. 1st, Whether a prohibition to alter, innovate, or infringe, was equal to a prohibition to sell, annailzie, or contract debts; 2dly, If it was, whether a personal tailzie not registrate was effectual against creditors notwithstanding the act 1685. The first we decided, and unanimously found, that this tailzie contained no prohibition to sell, and therefore assoilzied. As to the second we were divided. Kilkerran and Drummore thought a personal tailzie not recorded effectual agreeably to the judgment