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 disponed, and the debts paid by Mr Murray, distinguishing what he paid on assignations 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 compear; 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 resolutive 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 infeftment;—the lands having been sold in 1725 by the heirs in possession who in a part of the lands were infeft, but had not inserted the clauses in their infeftments, 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 infeft 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

of the House of Lords in the case Baillie against Denholm, (See No. 9 and No. 13.) The President and I thought it not effectual no more than infeftments containing all those clauses. But I doubted if it would be right for us now to judge of this, which could only serve to put the suitors to the expense of an appeal to have our judgment reversed. But the President said that was not certain. That the Peers are no more infallible than we, and often judge upon specialties, and therefore often enough vary in their cases. But the lawyers on neither side insisted for judgment, and therefore we gave none. (See DICT. No. 130, p. 15,600.)

No. 30. 1746, June 25. CASE OF OLIPHANT OF GASK.

OLIPHANT applied for registrating a tailzie of the estate of Gask, and the petition being by order intimated to the solicitors, they objected that the present Oliphant of Gask was attainted, and by the acts 1685, 1690, and 1715, cap. 20, the tailzie could not prejudge the Crown. But because the attainder was conditional, unless he surrendered before 12th July, we ordered it to be registrate.

No. 31. 1747, June 12. MRS MARGARET, &c. CAMPBELL, *against* A. CRAUFURD.

SKIRVANE by two settlements at eleven days distance from one another settled his land and personal estates upon his son, whom failing, his land estate to his bastard sons, and his personal estate to his heir-male. The son died, and his three daughters purchased the personal estate from the heir-male, and sue the heir of entail in the land-estate for relief of the debts, with which debts he by anxious clauses had burdened his land-estate, though he also burdened the other settlement of his personal estate with them likewise. It carried that there lies an action against the heir of entail to relieve them, *renit. tantum* Strichen, Dun, Kilkerran, (who was reporter) *et me.* But 17th February 1747 altered, and found no relief competent; and 12th June we adhered.

No. 32. 1747, Dec. 9. VISCOUNT GARNOCK *against* CREDITORS OF CRAUFURD.

IN 1708 John Lord Garnock by a minute of sale sold certain lands to Jordanhill at 19 years purchase and a feu-duty to be paid, and certain other lands to be thirled to a mill of Garnock's. Lord Garnock was heir of an entailed estate strictly limited; but as the entail was before 1685, and not recorded, so he did not insert the irritant and resolutive clauses in his own title to the estate; and his son Lord Patrick followed his example. However it was found in the last resort, that the heirs of entail could not sell lands for payment of debts affecting, or that might affect the estate; but the *bona fide* creditors were found safe notwithstanding the entail, and therefore this Lord Garnock got an act of Parliament enabling him to sell part of the estate for payment of debts, and sold *inter alia* the mill to which Jordanhill's lands were to be thirled. There never was any performance of the minute of sale on either part; yet Jordanhill being now broke, his creditors adjudged it, and inserted the lands in their summons of sale, hoping to make profit by an advance of price. Whereupon Lord Garnock pursued a reduction which was this